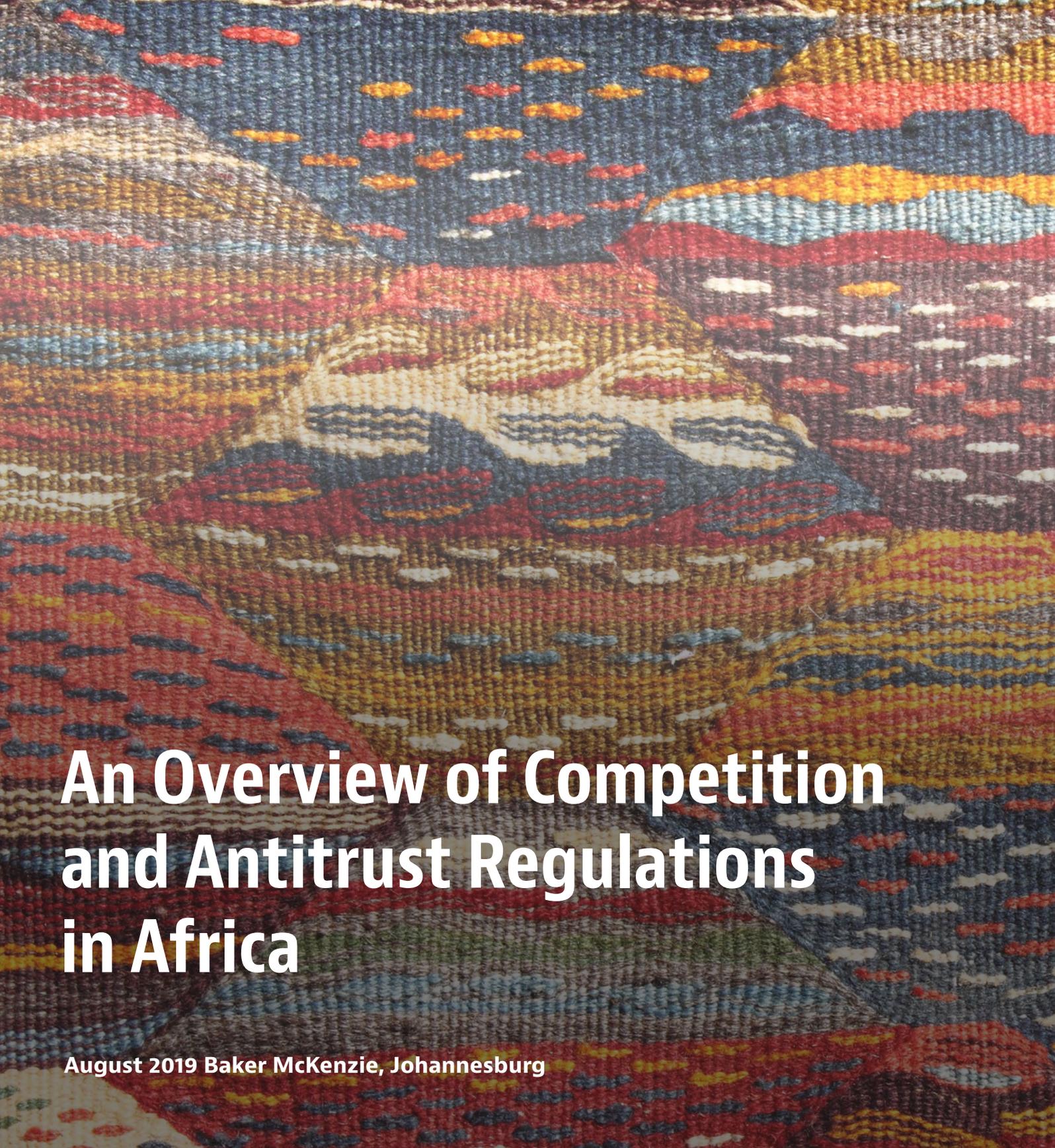


**Baker
McKenzie.**



**An Overview of Competition
and Antitrust Regulations
in Africa**

August 2019 Baker McKenzie, Johannesburg

IMPORTANT DISCLAIMER:

The material in this report is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this report without obtaining specific legal advice on the particular facts and circumstances at issue. Whilst the authors have exerted every effort to provide accurate and up-to-date information on laws and policy, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore, readers should consult their lawyer before taking any action.

Information contained herein is as at August 2019.



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PREFACE

The rapid growth of competition law in Africa

Competition law on the continent is the subject of notable growth. An increasing number of jurisdictions have adopted laws and regulations, established authorities, secured membership to regional antitrust regimes and ramped-up enforcement of suspected violations of prevailing competition laws at both domestic and regional levels.

New competition legislation

Since 2018, domestic competition legislation has been enacted in Angola and Nigeria. In Angola, these legislative developments have been bolstered by the establishment of the Angolan Competition Regulatory Authority, which recently became operational. In Nigeria, the Federal Competition and Consumer Protection Act was signed into law in 2019, establishing the Competition Commission and Competition Tribunal to enforce the legislation.

Madagascar adopted a new law, which modifies certain aspects of its competition laws. This is yet to be published in the official gazette, but also demonstrates an impending change (which is consistent with the general wave of development in relation to competition regimes on the continent).

Amendments to existing legislation

Outside of the introduction of entirely new laws in certain jurisdictions, there have also been significant amendments to existing legislative regimes in a number of countries, including Egypt, Ethiopia, The Gambia, Morocco, Mozambique, South Africa, Zambia, and Zimbabwe.

Egypt

In 2018, a new merger notification form and guidelines were introduced by the Egyptian Competition Authority.

Recently, an amendment was passed enabling the Council of Ministers to fix the prices of "essential products" for a specific period of time.

Ethiopia

Certain provisions of the competition law are currently being reviewed but there have been no recent amendments or guidelines relating to competition legislation. The provisions under review include the merger control regime in general, issues of change of control, and the definition of certain terms.

The Gambia

Guidelines regarding the interpretation of the Competition Act were published on 1 April 2019.

Morocco

The president and subordinate members of the Competition Council were appointed in December 2018. This brought the council into full operation, enabling the effective enforcement of Morocco's competition framework.

Mozambique

Regulations on competition in the air transport industry, which govern competition in this sector, were published in 2018.

PREFACE

- South Africa** The Competition Amendment Bill was signed into law in early 2019 and since then, certain provisions have come into effect with others still pending.
- Zambia** Guidelines on Calculating Merger Fees were issued in 2018. Proposed amendments to the Abuse of Dominance Guidelines and the Fines Guidelines have been circulated for public comment.
- Zimbabwe** The entire Competition Act has been amended, and is currently in draft form awaiting imminent approval.

The regulators

Africa's competition regulators are gaining momentum and becoming more sophisticated in the analysis of mergers and understanding of prohibited practices.

Over and above specific country regulation, Africa has a number of regional competition regulators, including the West African Economic Monetary Union ("**WAEMU**"), the East African Community ("**EAC**"), the Common Market for Eastern and Southern Africa ("**COMESA**"), the Economic Community of West African States ("**ECOWAS**") and the Economic and Monetary Community of Central Africa ("**CEMAC**").

In April 2019, the COMESA Competition Commission approved three new guidelines, including the Guidelines on Market Definition, the Guidelines on Restrictive Business Practices and the Guidelines on Abuse of Dominance. These guidelines were prepared in consultation with the national competition authorities of the member states and follow international best practice. Their aim is to provide clarity on the interpretation of the COMESA Competition Regulations and Rules, as well as predictability in enforcement by the regulator.

In May 2019, ECOWAS announced a new competition regulator with the launch of the ECOWAS Regional Competition Authority ("**ERCA**"). There is currently no domestic competition law in ECOWAS member countries, including Benin, Ghana, Guinea-Bissau, Liberia or Togo, with The Gambia and Nigeria being the only members of ECOWAS to have competition legislation in place. The ERCA will thus play a role in enforcing competition law in the region.

In June 2019, the East African Competition Authority ("**EACA**") finalised the EACA Outreach and Advocacy Strategy ("**Strategy**"), which aims to facilitate and promote awareness of competition policy across the region. The EACA recognises that market participants and consumers have little knowledge of competition laws and regulations, which impacts on enforcement. While finalised, the Strategy has not yet been officially accepted.

While not a regional regulator, it is worth noting that the African Competition Forum, an association of African competition agencies, exists to promote competition policy awareness in Africa and the adoption of competition policies and laws. The forum also facilitates regular contact between authorities, creating a platform for the sharing of best practice and domestic competition trends.

This publication

This publication engages with these developments at a domestic level, itemising relevant amendments and approaches of competition authorities on topical issues.

GEOGRAPHICAL OVERVIEW



KEY

-  Jurisdictions covered by this publication
-  Countries with antitrust laws



■ ALGERIA

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

We are not aware of any amendments or guidelines to the Competition Ordinance No. 03-03 of 19 July 2003, as amended in 2008 and 2010, ("Competition Law") since January 2018. In 2017, amendments to the Competition Law were proposed by the Competition Council in order to adapt the Competition Law to the current domestic and international position, however, the amendments have not yet been drawn up by the Ministry of Commerce.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

A market study regarding the pharmaceutical sector has been initiated by the Competition Council and is still ongoing.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

The Competition Council has expressed concern regarding the pharmaceutical sector.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, dawn raids are currently not a high risk in Algeria. We are not aware of any reported dawn raids conducted by the Competition Council since January 2018.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

We are not aware of any notified transactions that have been prohibited by the Competition Council since January 2018.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

We are not aware of any proposals of this nature.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The submission of a merger notification is not suspensory in Algeria. However, during the period in which the Competition Council is making its decision, the stakeholders of the transaction cannot implement any part of the transaction which is irreversible. We are not aware of any cases being brought against an entity for gun-jumping and/or prior implementation of a notifiable transaction.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases, since January 2018, in which the Competition Council fined any entities for failing to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

Not to our knowledge.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

According to the Competition Law, the Competition Council must respond to a merger filing within a period of three months from the date of notification. In a more complex transaction, the Competition Council may require the advice of another relevant administration, authority or ministry prior to approving the transaction. This may cause the approval process to take longer. In practice, the process generally takes between three and six months.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

In July 2018, the Competition Council imposed fines on three companies between DZD 33,383 (USD 270) and DZD127,427 (USD 1060) for cartel conduct in the advertising industry.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Not to our knowledge.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, cartel conduct/anti-competitive conduct are criminalised in Algeria. Apart from the above-mentioned Competition Council decision, we are not aware of any criminal charges brought, or convictions made, against any persons and/or entities for engaging in anti-competitive conduct since January 2018.



REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**
- Algeria is not a member of any regional bodies with a competition law regime. However, since 2016, Algeria has contributed to the African Competition Forum ("ACF").
- 15 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**
- Not applicable.
- 16 Do you have any views on the level of enforcement of the regional body?**
- Not applicable.
- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**
- Not applicable.



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A nighttime photograph of a cityscape, likely Luanda, Angola. The foreground features a large, illuminated dome structure with a grid-like pattern, possibly a stadium or arena. The middle ground shows a waterfront area with palm trees and a promenade. The background is dominated by a dense cluster of high-rise buildings, many of which are brightly lit, reflecting on the water. The sky is dark, and the overall atmosphere is vibrant and modern.

 **ANGOLA**

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The legal framework on competition encompasses the Competition Act, approved by Law No. 5/18 of 10 May 2018, and the Competition Regulations, approved by Presidential Decree No. 240/18, of 12 October 2018. These legislative developments have been bolstered by the establishment of the Angolan Competition Regulatory Authority ("**CRA**"), which recently became operational following Presidential Decree No. 313/18 of 21 December 2018, which approved bylaws of the CRA and the presidential appointment of its board of directors ("**Board**").

No other amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The CRA is relatively new; hence, no market inquiries have been initiated.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Dawn raids are permitted by the Competition Act. However, the CRA is relatively new; hence, it has not yet conducted any dawn raids.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

Merger filing fees have not yet been published.



7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

Yes, the submission of a merger notification is deemed suspensory — i.e. a merger subject to prior notification cannot be completed before it has been notified and cleared by the CRA.

Given the infancy of the CRA, no cases have been brought against any entities for failure to comply with competition-related requirements.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

Given the infancy of the CRA, no entities have been fined due to failure to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

Given the infancy of the CRA, no merger notifications have been accepted and/or analysed by the CRA.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Given the relative infancy of the CRA, it is difficult, at this point, to estimate how long it will require, on average, to review and approve notifiable mergers.

However, under the Competition Act, the CRA has a 120-day period to decide on transactions filed. If the referred time limit for the CRA to make a decision lapses without any decision being issued, the transaction will be considered to have been tacitly approved by the CRA.

In the case where an in-depth investigation is initiated by the CRA (to investigate whether the merger is considered likely to create or reinforce a dominant position in Angola, resulting in significant impediments to competition in the market or in a substantial part of it), a final decision must be issued within 180 days from the in-depth investigation.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

Given the relative infancy of the CRA, no prohibited practices have been investigated, and no penalties have been imposed as yet.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

No.



13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Cartel conduct/anti-competitive conduct is not criminalised, but is rather defined as an administrative offence that is subject to a fine. However, criminal liability may arise where the relevant anti-competitive conduct involves actions that may be deemed a crime, such as fraud, embezzlement, and abusive conduct, etc. Accordingly, even though the legislation does not expressly provide for specific types of crimes expressly related to anti-competitive conduct, the actual conduct/practice may entail certain actions that are criminalised.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Angola is a member of the Southern African Development Community ("**SADC**"), whose members signed and approved the Declaration on Competition and Consumer Policies in 2009 ("**Declaration**"). Under the Declaration, SADC members undertook to set up a system for effective cooperation in the application of the competition and consumer protection laws of each member state. The Competition and Consumer Policy and Law Committee ("**CCOPOLC**") was established under the Declaration, and is tasked with fostering cooperation and dialogue among competition authorities and encouraging the alignment of legislation. The CCOPOLC aims at facilitating cooperation and consultation in what concerns competition-related matters, but it does not operate as a regional body aimed at controlling anti-competitive practices within the SADC area.

15 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

No.

16 Do you have any views on the level of enforcement of the regional body?

Not applicable as Angola is not a member of a regional competition law regulatory body.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Where applicable, mergers are notifiable domestically only.



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■ BURKINA FASO

BURKINA FASO

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No amendments or new guidelines were put in place in 2018. The law governing competition dates from April 27, 2017, Law No. 016-2017/AN *portant organisation de la concurrence au Burkina Faso*.

(https://www.assembleenationale.bf/IMG/pdf/loi_016-2017_organisation_concurrence_au_bf.pdf)

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

Yes, there are provisions providing for market inquiries. The authority has initiated inquiries in the past (but not in 2018), some of which are still ongoing.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The opinion of the National Competition Commission ("NCC") (*Commission nationale de la concurrence et de la consommation*) is required before any merger can be implemented. In 2018, the NCC did not bring any actions against entities for carrying out a merger without notice.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

The NCC did not fine any entities for noncompliance with merger conditions in 2018.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

It is not possible to determine the average time within which the NCC will give its approval. However, the last approval was given within two months of the transaction being notified to the NCC.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

No penalties have been imposed since January 2018.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, the NCC has launched investigations into the markets for edible oils, hydrocarbons and sugary drinks.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Cartel conduct and anti-competitive conduct are criminalised in Burkina Faso, however we do not have any data on the criminal prosecutions and/or sanctions in this area since January 2018.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Burkina Faso is a member of WAEMU, which has a competition law regime. Therefore, activities in Burkina Faso should be conducted with the WAEMU competition laws in mind.



15 If so, please comment on the frequency of your engagement with the regional body.

We have not had engagements with WAEMU in relation to Burkina Faso.

16 Do you have any views on the level of enforcement of the regional body?

Yes, the NCC collaborates with WAEMU regarding the framework of anti- competitive investigations falling within WAEMU's competence as there is a sharing of competence between Burkina Faso and WAEMU.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes, if the merger is notifiable, it must be notified both domestically and regionally.



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■ BURUNDI

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No amendments nor guidelines relating to the competition legislation have been proposed or enacted since January 2018 in Burundi.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

No. The competition authority is not yet operational, despite the existence of the Competition Act, which was enacted in 2010.

However, it is important to note that a draft decree relating to the establishment of the competition authority was submitted to the president of Burundi on 20 April 2017, with the signature to and approval of the decree pending.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No, the competition authority is not yet operational.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, the competition authority is not yet operational.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No, the competition authority is not yet operational.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

Yes, the submission of a merger notification is suspensory according to Article 49 of the Competition Act. Parties to a merger are prohibited from implementing the merger for a period of three months pending assessment and approval by the competition authority.

No cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction have been initiated since January 2018 given that the competition authority is not yet operational.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

No such cases exist given that the competition authority is not yet operational.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No, the competition authority is not yet operational.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

We are not in a position to advise on timing for merger assessments and approvals given that the competition authority is not yet operational.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

No such information exists given that the competition authority is not yet operational.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

No, the competition authority is not yet operational.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

There are criminal and civil sanctions against cartel conduct and anti-competitive conduct in Burundi. The sanctions include administrative penalties, damages, suspension of activities, fines, jail sentences, and withdrawal of licences for a certain period, etc.

Given that the competition authority is not yet operational, such sanctions/penalties are not yet applicable. However, theoretically, a judge may impose such sanctions/penalties during a trial before the civil, criminal or administrative courts in Burundi.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Burundi is a member of the EAC, COMESA and CEMAC. Therefore, activities in Burundi should be conducted with these three regional bodies in mind.



15 If so, please comment on the frequency of your engagement with the regional body.

We regularly engage with the COMESA Competition Commission on several transactions.

16 Do you have any views on the level of enforcement of the regional body?

No. However, we note that even though the competition authority of Burundi is not yet operational, parties must always consider the COMESA, CEMAC and EAC competition laws and regulations when conducting activities in Burundi or activities outside of Burundi that have an effect in Burundi, or in the regional common market.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

According to Burundian laws (including regional treaties), a merger may be notifiable to regional competition authorities.

Given that the national competition authority of Burundi is not yet operational, no notifications have been made domestically.



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■ CAMEROON

CAMEROON

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No amendments have been made to competition law in Cameroon since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The National Competition Commission ("**Commission**") has, before now, carried out inquiries in several sectors of the economy, either at the request of a public administration or on its own initiative, when the practices of certain companies were likely to affect fair competition. These inquiries were conducted in, *inter alia*, the energy, telecommunications, port and airport, and money transfer sectors.

As of today, there is no plan to initiate any market inquiries in relation to any other sector/industry.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No. The Commission generally does not issue public statements expressing concerns in relation to any sector/industry. However, the relevant sector/industry representatives are usually notified directly of any specific concerns that the Commission might have.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, dawn raids by the Commission are not a high risk in Cameroon. There have been no dawn raids conducted by the Commission since January 2018.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The submission of a merger notification is suspensory in Cameroon.

According to the Commission, there have been no cases of entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

There have been no such cases since January 2018.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No. Mergers in Cameroon are generally not approved with conditions. Where, upon the review of a merger notification, the Commission is in doubt of a fact, it will generally request the parties to provide justifications or further particulars.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

There is no distinction in terms of the competition laws of Cameroon between complex and non-complex transactions. Generally, a merger must be approved within a maximum period of six months from the date of notification; otherwise, the merger will be deemed to be approved.

In practice, a transaction is approved by the Commission within a minimum period of 30 days and a maximum period of 45 days from the date of notification. However, approval may be delayed in the event of a request from the Commission for additional information.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

There have been no noteworthy penalties in this respect since January 2018.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, we understand that the Commission has launched new investigations since January 2018 against entities engaging in prohibited practices in the money transfer and energy sectors. Unfortunately, the Commission has not published detailed information in relation to these investigations.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, cartel conduct/anti-competitive conduct is criminalised in Cameroon. However, no criminal charges have been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018.



REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Cameroon is a member of CEMAC. Accordingly, activities in Cameroon should be conducted with CEMAC in mind.

15 If so, please comment on the frequency of your engagement with the regional body.

We have not had any extensive engagements with CEMAC in relation to Cameroon.

16 Do you have any views on the level of enforcement of the regional body?

We understand that CEMAC frequently consults Cameroon on competition issues, as the Cameroonian legislation is more elaborate than those of other CEMAC member states.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Merger notifications are only done domestically.



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■ CAPE VERDE

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The legal framework on competition is the 2003 Competition Act, approved by decree in terms of Law No. 53/2003 of 24 November 2003.

According to the Competition Act, the bodies responsible for the enforcement of competition rules are the General-Directorate for Industry and Trade ("**DGIC**") and the Competition Council ("**Competitoin Council**"). The effective setting up of the Competition Council has been announced by the government on multiple occasions, but this has not yet been implemented.

In spite of the absence of a proper competition authority, a few regulatory bodies have been set up, with some powers on competition matters. The most important by reach is the Multi-Sector Regulatory Agency for the Economy ("**ARME**"), created by decree in terms of Law No. 50/2018, of 20 September 2018, which is responsible for regulation in the sectors of communications, energy, water and passenger transport. Until the competition authority is in place, ARME is empowered to enforce competition rules in these sectors. In addition, ARME will coordinate with the competition authority, once this is set up, on matters relating to competition.

No other amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

According to the Competition Act, the DGIC has the power to undertake the market inquiries it deems necessary. To the best of our knowledge, no market inquiries have been initiated in relation to any sector/industry.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

To the best of our knowledge, no concerns have been publicly expressed in relation to any industry/sector.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Currently, dawn raids are not a high risk. Under the Competition Act, the DGIC has the authority to conduct dawn raids but, to the best of our knowledge, none have been conducted.



MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

According to the Competition Act, the minister with regulatory oversight over the sector is the competent entity to approve (with or without remedies) or to prohibit notified transactions. To the best of our knowledge, in 2018, no transactions were prohibited.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

Merger filing fees have not yet been published. In practice, no merger filing fees have been demanded in filings we have carried out on behalf of clients.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

The submission of a merger notification is deemed suspensory, and therefore a merger subject to notification cannot be completed before being notified and cleared by the minister with regulatory oversight over the sector, or being cleared through implied consent after a certain term has lapsed (please refer to paragraph 10 below).

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

To the best of our knowledge, no entities were fined due to failure to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

To the best of our knowledge, no merger was approved subject to novel or otherwise noteworthy conditions. Our experience has shown that merger filings tend to be cleared through implied consent, rather than being screened and decided upon.



10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The filing must be made prior to the closing of the transaction. Upon receiving the notification and (in theory) gathering other data it may deem appropriate, the DGIC sends the file to the ministry with regulatory oversight over the sector for final decision.

The DGIC has 30 days — a term which may be suspended if additional information is requested — to hear the applicants in relation to any particular issue, and to carry out any other diligence that it (or the applicants) may deem relevant, and then submit the file to the minister for decision.

The statute also sets forth, in an inconsistent manner, that the minister then has a 30-day deadline, counted from the filing of the notification (in practice this has been interpreted as counting from the date when it receives the file from the DGIC), to either (i) approve the proposed transaction or (ii) submit the notification to the as yet non-existent Competition Council for final decision. In practice, it is up to the minister to approve or reject the proposed transaction.

If the minister fails to notify the parties of a decision within the 30-day deadline — 61 days in total from the date of filing — the transaction is deemed cleared through implied consent.

In view of the above, we would expect the formal or tacit approval to take between 60 to 90 days (without taking into consideration possible suspensions, as mentioned above).

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

The competition authority is authorised to impose fines on entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc. However, the competition authority is not yet operational. Hence, thus far, no prohibited practices have been investigated nor penalties, in connection thereto, have been imposed.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

The competition authority is not yet operational. The DGIC, to the best of our knowledge, has not been proactive in carrying out investigations.



- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

Cartel conduct/anti-competitive conduct is not criminalised, but it is classed as an administrative offence subject to a fine. However, criminal liability may arise where the relevant anti-competitive conduct involves actions that may be deemed a crime, such as fraud, embezzlement, abusive conduct, etc. Therefore, even though the legislation does not expressly provide for specific types of crimes related to anti-competitive conduct, the actual conduct/practice may be criminalised.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Cape Verde is member of ECOWAS.

The ECOWAS Regional Competition Authority was only launched on 12 July 2018 (hosted by The Gambia), and therefore its operation and effectiveness is unclear.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

Engagement with ECOWAS is infrequent.

- 16 Do you have any views on the level of enforcement of the regional body?**

Having been launched on 12 July 2018, the level of enforcement by the Regional Competition Authority for ECOWAS is unclear, but enforcement is likely to be low or even non-existent.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

A merger is notifiable regionally, before the Regional Competition Authority, if it affects trade between member states of ECOWAS. However, there are no explicit rules defining the allocation of jurisdiction between national and ECOWAS levels.



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■ EGYPT

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

On 1 September 2018, a new merger notification form and guidelines were introduced by the Egyptian Competition Authority ("ECA"). The new notification form is more detailed and wider in scope than its predecessor, providing for notification in respect of joint ventures and detailing the procedures for notification in respect of the acquisition of IP rights, land, ships and airplanes. The new notification form also introduces the requirement of notification in circumstances of a change in control. More recently, Law No. 15 of 2019 was issued, amending certain provisions of Egyptian competition law. The amendments seek to enable the Council of Ministers to fix the prices of "essential products" for a specific period of time.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

Market inquiries in Egypt are usually focused on strategic markets such as cement, steel and sugar.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

Yes, the ECA has expressed concerns regarding the pharmaceutical sector in Egypt, as it seems that the ECA has noted several potential antitrust violations. More recently, the ECA has also announced a study in the IT sector and clearly expressed that the sector will be under special focus in the coming period.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Yes. Since the appointment of a new ECA chairperson and board in May 2018, dawn raids have become a high risk in Egypt. The ECA now employs dawn raids as an enforcement tool more frequently and with greater vigour. Since May 2018, the ECA has conducted more than six dawn raids on the Federation of Industry and Commercial Chambers, and on other companies and entities. A recent dawn raid produced evidence relied on by the ECA for the prosecution of 70 companies allegedly involved in anti-competitive conduct in the cement market. In addition, more cases (two cartel decisions) were brought based on evidence obtained through dawn raids.



MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

No, as Egypt has a post-merger notification regime. However, the ECA has intervened and issued an injunction against Uber and Careem (regional competitors) requiring them to hold off on their proposed transaction until they obtain prior approval from the ECA. According to the ECA, the acquisition would have amounted to a monopoly in the market of ride-hailing apps.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

No.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

No, as Egypt has a post-merger notification regime

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

There have been so such cases since January 2018.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The ECA revises the notification file on the spot and if the file is complete, it issues a notification receipt. In relation to the Uber case, the ECA issued its injunction during October 2018 and the case is still being reviewed and negotiated among the parties.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

A sports media channel has been fined an amount EGP 800 million in two cases for abusing its dominant position in the market for broadcasting football tournaments and championships in Egypt. It was found to have engaged in various kinds of tying, which is prohibited per se under Egyptian competition law. In addition, in 2018 four pharmaceutical distribution companies were fined an amount of EGP 5,58 billion for engaging in cartel conduct. In July 2019, the Court of Appeal fined the former management of Confederation of African Football ("**CAF**") a total of EGP 700 million for abusing their dominance in Egypt.



12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

The ECA is active in investigating alleged prohibited practices and, since May 2018, it has issued prohibition decisions against firms operating in the clay brick, school uniform, freight shipping, pharmaceutical, mobile headsets, electricity and automotive markets. However, more recently, the ECA issued an infringement decision against two online delivery platforms for entering into a market-sharing cartel. In addition, three more infringement decisions were issued in the pharmaceuticals sector.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, it is criminalised. In July 2019, CAF former management were fined EGP 700 million. On February 2019, the Court of Appeal fined 13 managers of four pharmaceutical distribution companies a total of EGP 420 million.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies, that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Egypt is a member of COMESA. Accordingly, activities in Egypt should be conducted with COMESA in mind.

15 If so, please comment on the frequency of your engagement with the regional body.

We have regular engagements with the COMESA Competition Commission on several investigations/transactions.

16 Do you have any views on the level of enforcement of the regional body?

The ECA and the COMESA Competition Commission regularly engage with each other in matters of mutual interest. For example, the ECA and the COMESA Competition Commission cooperated with each other in relation to the CAF, Uber and FIFA cases, where the COMESA Competition Commission only reacted and intervened. In addition, COMESA regularly reviews aspects of mergers related to Egypt.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes, a merger is notifiable to both the ECA and the COMESA Competition Commission, where the notification requirements are met.



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 ETHIOPIA

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

Although certain provisions of the competition law of Ethiopia are currently being reviewed, there have been no new amendments or guidelines relating to competition legislation since January 2018.

The provisions under review, relate to, among others, the merger control regime in general, issues of change of control, and the definition of terms.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

Despite the vague nature of the provisions, the Ethiopian Trade Competition and Consumer Protection Authority ("**Authority**") has assumed the power to conduct market inquiries by virtue of Article 30 sub-article 16 of Proclamation No. 813/2013 ("**Proclamation**"). To date, there have been no market inquiries initiated by the Authority in relation to any sector/industry in Ethiopia. However, given that the proposed amendments to the Proclamation include provisions on market inquiries, the initiation of market inquiries is expected in the near future.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No, but the Authority closely monitors sectors which affect the public in general.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Yes, the Authority has undertaken several dawn raids since January 2018 based on tips and suspicions of anti-competitive conduct. In particular, the Authority has focused on entities which are believed to have engaged in price-fixing and monopolising markets. Such entities include brewery companies, steel companies, etc.

MERGER CONTROL DEVELOPMENTS

- 5 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

Given the proposed amendments to the merger control regime, there is a likelihood that the current merger filing fees may be amended (although the Authority currently does not collect filing fees despite being entitled to do so).



7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

Yes, approval must be obtained before a merger is implemented. No cases have been brought against entities for gun-jumping since January 2018.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

A case in which an entity failed to comply with merger conditions was instituted prior to January 2018 and has been remanded (after January 2018) to the Tribunal, after an appeal to the High Court.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

Yes. A brewery company was granted approval to acquire the majority of the shares in a bottle-producing company, subject to the condition that it would not stop or reduce the supply of bottles to its competitors.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Generally, a non-complex transaction takes a week to 10 days to approve, while a complex transaction takes four to six weeks.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

The Authority recently imposed a penalty of 5% of a company's total annual turnover on allegations of unfair competition.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

In 2018, the Authority referred 21 rebar, corrugated sheet, steel tube and pipe producers, as well as rebar importers, for prosecution on price-fixing charges. If found guilty, the respondents could incur an administrative penalty of up to 10% of their annual turnover. Cartel conduct in Ethiopia carries criminal liability and transgressors could face imprisonment for a period up to five years.

This is the first documented prohibited practice matter that has commenced in Ethiopia and likely marks the beginning of a period of active enforcement. In light of the relative infancy of competition law in Ethiopia and given the corresponding lack of case law, this case will be precedent-setting.

The Authority's investigation follows similar investigations into steel cartels globally and on the African continent.



- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

Yes, it is criminalised. The Authority has previously brought criminal charges against persons/entities on grounds of price-fixing, making available for sale or selling goods that are below the standard of consumption, selling goods that have expired, and so on.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Ethiopia is a member of COMESA. Accordingly, activities in Ethiopia should be conducted with COMESA in mind.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

We have regular engagements with COMESA on several transactions.

- 16 Do you have any views on the level of enforcement of the regional body?**

The Authority and COMESA communicate in relation to mergers falling under both of their jurisdictions. The director of the Authority is a member of the COMESA Competition Commission; hence, this typically bolsters the level of engagement between the Authority and the COMESA Competition Commission. In addition, it is important to note that the COMESA treaty has been ratified by the Ethiopian Government in accordance with Proclamation No. 394/2004, and this assures enforceability of COMESA decisions in Ethiopia.

Furthermore, the COMESA Competition Commission launched investigations into CAF's decision to extend exclusive marketing of broadcasting rights and sponsorship agreements with Lagardère Sports in relation to CAF football tournaments and into Coca-Cola Africa Proprietary Limited's distribution agreements in Ethiopia and the Comoros. This is indicative of the increasing level of enforcement by the COMESA Competition Commission in Ethiopia, amongst other member states.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

Yes, parties are required to notify domestically and regionally, provided the notification requirements are met.



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■ THE GAMBIA

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

The guidelines, specifically on economic and legal analysis, as required under section 18(1)(a) of the Competition Act, 2007 ("**Act**"), have been enacted and will come into effect by 1 April 2019 ("**Guidelines**"). The Procedural Rule which is also required under section 18(1)(b) of the Act, has been drafted. However, other regulations that are required to be made under section 61(1) of the Act for the improved implementation of the provisions of the Act have not yet been enacted.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Yes. The Gambia Competition Commission ("**GCC**") has initiated the following market studies:

- Hajj Market Study;
- Rice & Sugar Market Study;
- Liquefied Petroleum Gas (LPG) Market Study;
- Cement Market Study;
- Tourism Market Study;
- Banking Market Study; and
- Vehicle Procurement Study.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes. On 10 January 2018, the GCC issued a press statement warning commercial banks on late interbank fund transfers in respect of employees' salaries. The GCC noted that "*when payment is made to the employer's bank, it can take up to 72 hours before the money gets to the account of employees who do not have an account with the bank of the employer. This has forced many people to leave the banks of their choice for the employer's bank to receive timely payment. This conduct constitutes a flagrant violation of section 31 of the Competition Act 2007. Any commercial bank involved in this anti-competitive conduct should desist from it with immediate effect.*"

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

No, dawn raids are not a high risk in The Gambia. No dawn raids have been conducted by the GCC since January 2018.



MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No; the GCC has decided not to receive or deal with mergers until the merger regulations that are required to be made under section 33 of the Act have been finalised and effected. As such, the merger provisions under section 32 of the Act will not take effect until the regulations are enacted. Mergers are currently governed by the Companies' Act.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The GCC is currently not accepting merger notifications. However, in terms of section 33 (2)(a) of the Act, the Minister of Trade may create a regulation prescribing measures relating to the control of mergers. These measures may include a provision requiring parties to a merger to notify the GCC of such merger, either in advance of its implementation in The Gambia, or within a defined period following the implementation in The Gambia (this regulation has not yet been enacted).

- 8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

There have been no such cases since January 2018, given that the GCC is currently not accepting merger notifications.

- 9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

No, the GCC is currently not accepting merger notifications.

- 10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

The Guidelines set a time limit of three months for the approval of merger transactions. However, the GCC is currently not accepting merger notifications.

PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

There have been no such penalties since January 2018.



12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, the GCC initiated an investigation in the essential commodities (i.e. rice, sugar, milk, potatoes, oil, onions, etc.) sector. The investigation revealed that, based on the declaration made by importers to the Customs and Excise Department of the Gambia Revenue Authority, taking into account all the relevant costs, there was excessive pricing of sugar and rice in the Gambian market, averaging USD 185 per metric tonne for sugar and USD 245 per metric tonne for rice.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Cartel conduct is criminalised by virtue of the provisions of section 49(5) of the Act. However, no criminal charges have been brought against any person or enterprise since January 2018.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

The Gambia is a member of ECOWAS, which has its headquarters in The Gambia. Accordingly, activities in The Gambia should be conducted with ECOWAS in mind.

15 If so, please comment on the frequency of your engagement with the regional body.

ECOWAS is not yet operational.

16 Do you have any views on the level of enforcement of the regional body?

ECOWAS is relatively new (it was established in July 2018). A significant level of enforcement is expected in relation to The Gambia as The Gambia has ratified the ECOWAS competition regulations. This will be compounded by the fact that ECOWAS has its headquarters in The Gambia, which will make enforcement relatively easy in relation to The Gambia.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

The GCC is currently not accepting merger notifications. In addition, we are not aware if the ECOWAS Regional Competition Authority is accepting merger notifications given that it is relatively new. However, in terms of ECOWAS competition policy, the ECOWAS Regional Competition Authority will only be notified of a merger if such merger will affect competition in two or more ECOWAS member states. In the event that a merger only affects The Gambia, the requirements for notification to the ECOWAS Regional Competition Authority will not be triggered.



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GHANA

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

There is no overarching competition legislation or regime in Ghana. The various sectors of the economy are regulated by industry-specific regulators/regulatory bodies that serve as competition authorities to promote competition and prevent anti-competitive behaviour.

The Ministry of Trade and Industry is still in discussions with the key stakeholders on the introduction of a competition law. The draft Competition Bill 2019 is being reviewed by the Ministry of Trade and Industry and is expected to be tabled before parliament in the coming months.

The principal objective of the draft competition law is to "maintain and encourage competition in markets, to promote and ensure fair and free competition, and to protect the welfare and interests of consumers."

Under the draft Competition Bill 2019, provision is made for the establishment of a Competition Commission of Ghana, with a mandate to monitor trading practices in the country with the purpose of ensuring fair trade practices and of preventing restrictive trade practices.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

We are not aware of any plans by any industry regulator to initiate any market inquiry in any sector in Ghana.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

We are not aware of any publicly expressed concerns by any industry regulator in relation to an industry/sector.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, there is no competition law regulator in Ghana.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

We are not aware of any notified transactions that have been prohibited by industry-specific regulators in Ghana since January 2018.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

We are not aware of official proposals to amend merger filing fees or of whether such amendments have been affected since January 2018.



7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

Yes. In the banking sector, the Bank of Ghana must be notified, and its prior approval should be obtained, in relation to an acquisition or sale of shares of more than 5%, or the merger, of a bank, specialised deposit-taking institution or financial holding company with another bank or other specified institution.

In the mining industry, the minister's prior approval is required for mergers involving share transactions.

In the telecommunications industry, a merger likely to result in a change of control of a licensed company must be approved by the National Communications Authority before the transfer can go through.

We are not aware of any industry-specific regulator bringing cases of gun-jumping and/or prior implementation of a notifiable transaction against regulated entities since January 2018.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any such cases since January 2018.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

We are not aware of any approved mergers subject to novel or noteworthy conditions since January 2018.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Industry-specific notifications vary in terms of approval. We are not in a position to advise of the timing of such industry-specific approvals.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

We are not aware of any such penalties since January 2018.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

We are not aware of any such investigations by any regulatory authority in Ghana since January 2018.



13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, the overarching law that criminalises anti-competitive criminal conduct in Ghana is the Protection Against Unfair Competition Act, 2000 ("**Unfair Competition Act**"). The Unfair Competition Act criminalises behaviour that is likely to cause confusion and be misleading in terms of others' business goodwill, reputation and proprietary information.

The National Petroleum Authority Act, 2005 ("**NPA Act**") criminalises the formation of cartels, monopolies and unfair competition in the petroleum industry, as well as cartelisation in the petroleum downstream industry. "Cartelisation" refers to an agreement, combination of or concerted action by refiners, importers or dealers or their agents, to fix prices, restrict output, divide markets either by product or by area, or allocate markets either by product or by area to restrain trade or free competition. The penalty for forming a cartel or a monopoly is imprisonment for a minimum of 10 years, or a minimum fine of GHS 60,000, or both. The minimum fine in the case of cartelisation is GHS 180,000.

We are not aware of criminal charges or convictions that have been made under either the Unfair Competition Act or the NPA Act since January 2018.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Ghana is a member of ECOWAS. Ghana is mandated by its membership of ECOWAS, the World Trade Organisation ("**WTO**"), the United Nations Conference on Trade and Development, and the African Continental Free Trade Area ("**AfCFTA**") to have a competition policy in place.

15 If so, please comment on the frequency of your engagement with the regional body.

The ECOWAS Regional Competition Authority is relatively new. The Ministry of Trade and Industry continues to engage with the relevant regional and international bodies on the formulation of a competition policy in Ghana. These engagements take place during meetings of the various organisations and on the commemoration of World Competition (Antitrust) day.

16 Do you have any views on the level of enforcement of the regional body?

The ECOWAS Regional Competition Authority is relatively new. A relatively significant level of enforcement by the ECOWAS Regional Competition Authority in relation to Ghana is expected, given that Ghana signed the ECOWAS Supplementary Act on Competition Rules in 2008 and the Further Supplementary Act in 2013.



17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Certain industry-specific regulators in Ghana must be notified of notifiable transactions. In addition, the ECOWAS Regional Competition Authority must be notified of a merger if it affects two or more ECOWAS member states. To the extent that the merger will only affect Ghana, the notification requirements of the ECOWAS will not be triggered.



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KENYA

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

Since January 2018, the Competition Authority of Kenya ("**CAK**") proposed a number of new rules and guidelines relating to competition law. These include:

a. the Competition (Amendment) Bill of 2019

The proposed bill is intended to amend the Competition Act, 2010 ("**Competition Act**") by amending the buyer power provisions under the existing law to enhance the monitoring and investigative powers of the CAK, as well as setting out the circumstances that the CAK can take into account in investigating abuse of the buyer power provisions. The proposed bill also proposes to enhance the prohibition on professional associations against having in place restrictions that have the object or effect of distorting competition.

b. the proposed Consolidated Guidelines on the Substantive Assessment of Mergers under the Competition Act ("**Proposed Consolidated Merger Guidelines**")

The Proposed Consolidated Merger Guidelines are intended to give guidance on Part IV of the Competition Act, 2010 ("**Competition Act**"), which relates to mergers. The Proposed Consolidated Merger Guidelines cover matters such as the basis of the CAK's exercise of jurisdiction with respect to mergers, transactions subject to notifications, parameters to be considered by the CAK when undertaking merger analysis and prescribing conditions to mergers, to mention just a few key points. These guidelines are largely similar to the existing ones, but have been revised to include new legal developments such as those relating to buyer power, and to delete provisions that have been provided for in the other proposed rules and guidelines discussed below.

c. the proposed Merger Threshold Rules, 2018 ("**Proposed Merger Threshold Rules**")

The Proposed Merger Threshold Rules generally set out the thresholds for merger approval and/or exclusion applications, the types of mergers that are exempted from notification requirements, the amounts of merger filing fees payable for different applications, the criteria that shall be applied by the CAK in determining the relevant turnover of merging parties and notification requirements in relation to mergers notifiable to the COMESA Competition Commission. Guidance on these matters has already been provided

for in various existing guidelines, but the Proposed Merger Threshold Rules consolidate and harmonise such guidance into one piece of legislation and amend some aspects, such as the merger filing fees payable and the applicable thresholds for mergers and exclusion applications.



d. the proposed Block Exemption Guidelines ("**Proposed BEGs**")

The Proposed BEGs are intended to apply to vertical agreements — specifically franchise agreements, stadia branding rights/media content generation agreements, broadcasting agreements and one-off sporting and promotional events. In most cases, these types of agreements contain clauses that are potentially restrictive (e.g. *minimum resale price maintenance, exclusivity provisions (territories, products or customers), or non-compete restrictions, etc.*). Such clauses are prohibited under the Competition Act unless a prior exemption is obtained from the CAK. The Proposed BEGs provide that where agreements/parties meet the thresholds set out under the Proposed BEGs, the parties to such arrangements would qualify to benefit from the block exemption, meaning that parties can implement agreements with the restrictive clauses described above without having to obtain prior exemption from the CAK.

e. the proposed Competition (General) Rules ("**Proposed Competition General Rules**")

The Proposed Competition General Rules have been drafted pursuant to section 93 of the Act and provide procedural guidance for the implementation of the provisions of the Competition Act. The Proposed Competition General Rules set out the procedures applicable in relation to initiation, review and determination of various complaints and investigations, exemption applications, block exemptions, infringements under the Competition Act, assessment of mergers, and consumer-protection initiatives.

f. the proposed Competition (Abuse of Buyer Power) Rules ("**Proposed Abuse of Buyer Power Rules**")

Buyer power is defined in the Competition Act as the influence exerted by an undertaking/undertakings in the position of a purchaser, to obtain from a supplier more favourable terms or to impose a long-term opportunity cost (including harm or a withheld benefit), which if carried out, would be significantly disproportionate to any resulting long-term cost to the undertaking/ undertakings.

The Proposed Abuse of Buyer Power Rules are intended to govern the procedure relating to the conduct of investigations, the analysis, determination and settlement of abuse of buyer power complaints and the determination of penalties and remedies relating to the abuse of buyer power. These rules complement the buyer power provisions in the Competition Act by providing recourse for acts that constitute abuse of buyer power such as delayed payment, unilateral termination or threat of termination of supply contracts, refusal to receive goods or the return of part or all goods, the unfair transfer of costs and risks to suppliers, as well as any unfair demand for preferential terms, which are not provided for in the Competition Act.



g. the proposed Search and Seizure Guidelines
 ("**Proposed Search and Seizure Guidelines**")

The Proposed Search and Seizure Guidelines are intended to provide guidance on conduct of dawn raids by the CAK. The Proposed Search and Seizure Guidelines are pursuant to section 32 of the Competition Act, which gives the CAK the authority to conduct investigations that may include searches. These guidelines provide clarity on issues pertaining to searches such as the general conduct of searches (with or without search warrants), the search and seizure process, access to computerised data, right to representation during raids, etc., and are intended to achieve transparency and consistency in the law's application.

h. the proposed Consumer Protection Guidelines
 ("**Proposed Consumer Protection Guidelines**")

The Proposed Consumer Protection Guidelines were enacted pursuant to Part VI of the Competition Act, which deals with consumer welfare. These guidelines take into consideration the emerging issues and international best practice and principles as provided for in the United Nations Guidelines on Consumer Protection. The main focus of the Proposed Consumer Protection Guidelines includes: false or misleading representations, unconscionable conduct against consumers and business transactions, product safety standards and unsafe goods, product information standards, and liability in respect of unsuitable goods and defective goods.

The proposed rules have been presented to the Kenyan Parliament for review and approval, while the guidelines have been presented to the Attorney General's office for review and publication.

i. The Revised Guidelines on Relevant Market Definition ("**Revised Market Definition Guidelines**")

The CAK recently published the Revised Guidelines on Relevant Market Definition (to update the previous Guidelines on Relevant Market Definition ("**Previous Market Definition Guidelines**"). The definition of what constitutes a relevant market under the Revised Market Definition Guidelines is similar to the definition under the Previous Market Definition Guidelines, save for the addition of the production methodologies involved, raw materials used and route-to-market considerations to the product market definition.



The Revised Market Definition Guidelines have introduced the dimension of multi-sided platforms (which allow distinct user groups to interact with each other through a common platform) in defining product markets. Examples of multi-sided platforms include internet-based trading platforms and stock exchanges. When dealing with such markets, the Revised Market Definition Guidelines provide that the CAK will apply a multi-sided market approach, which is not elaborated on further. However, the Revised Market Definition Guidelines allow the CAK to refer to decisions of competition regulators in other jurisdictions who have dealt with similar markets. The Revised Market Definition Guidelines also take into consideration virtual/digital markets, which have limited the physical interaction between buyers and sellers. In such markets, the Revised Market Definition Guidelines provide that the CAK will consider substitutability at one side of the market in contact with the wider market for the basic products and whether there is a constraint from competing virtual and/or physical markets.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Yes, there are market inquiry provisions in Kenya.

- a. In May 2019, the CAK notified the public that it would carry out a market inquiry into the Kenyan leasing sector. The study would focus on leasing in sectors such as financial services, agriculture, health, extractives and retail, among others. The study would: assess the legislative framework governing the operation of leasing entities and the mechanisms of enforcing leasing contracts; assess whether there are agreements in the sector which prevent, distort or restrict competition and affect consumer welfare; assess the nature/conduct of market participants in the leasing sector; establish if there are any barriers to entry and exit that inhibit competition and effective market functions; explore the sources of competitive advantages being exploited by the key players and the main channels utilised to obtain business; determine whether any of the provider segments are better positioned for compliance within the existing regulatory framework than others; examine the licensing regimes for each provider segment; and inform market participants of the legal and regulatory framework, to encourage greater competition in the leasing sector in Kenya.

The study would assess the legislative framework governing the operation of leasing entities and the mechanisms of enforcing leasing contracts; assess whether there are agreements in the sector which prevent, distort or restrict competition and affect consumer welfare; assess the nature/conduct of market participants in the leasing sector; establish if there are any barriers to entry and exit that inhibit competition and effective market functions; explore the sources of competitive advantages being exploited by the key players and the main channels utilised to obtain business; determine whether any of the provider segments are better positioned for compliance within the existing regulatory framework than others; examine the licensing regimes for each provider segment and inform the legal and regulatory framework to encourage greater competition in the leasing sector in Kenya.



The ultimate objective of the study is to develop an effective regulatory framework to govern the sector and also deepen competition. This study is still ongoing and a report has not yet been published.

- b. The CAK also undertook a **study on the retail sector market** in 2017 (particularly supermarkets and hypermarkets) to establish the average route followed in the supply of goods from producers to retailers, the process involved in the allocation of shelf space vis a vis bargaining power of suppliers, any regulatory constraints to competition, the nature and extent of exclusive agreements and the pricing strategies that retailers employ. The CAK's annual report for the year 2016-2017 indicated that the study was finalised and that the report's recommendations would be implemented during the CAK's 2017-2018 financial year.
- c. Other market studies/inquiries that have been previously undertaken by the CAK include the study on the seed industry (2014), sugar sector (2014), cement industry (2014), banking sector (2014 and 2017); fertiliser industry (2015), USSD service provision by mobile network operators in Kenya (2016), construction industry (2017) the telecommunications sector (2017), and a regional study into the shipping, trucking and haulage industry in Kenya, Uganda, Rwanda and Burundi(2017/2018) to mention a few examples. The reports relating to these studies are accessible under the 'resource centre' tab on the CAK's website.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

- a. The CAK has not publicly expressed concern in relation to any industry/sector. However, we note that in its annual report for the year 2016-2017, the CAK indicated that intended to focus on dismantling the regulatory obstacles in different sectors, implementing the recommendations from the banking and USSD market inquiries, developing the lending market in Kenya, reviewing and aligning competition instruments with market realities, and developing and operationalising the Competition Act rules.

In the annual report for the year 2017-2018, the CAK indicated that it would prioritise initiating investigations into those sectors, and focus on intervening in areas in support of the Big 4 Economic Transformation Agenda in Kenya, namely affordable housing, manufacturing, universal health coverage, and food security. The annual report also shows that the CAK intends to enhance surveillance in various sectors of the economy for potentially anti-competitive regulations and policies, and develop and implement frameworks with regional economic communities to facilitate harmonisation of laws and regulations for cross-border competition and consumer issues.

- 
- b. The CAK has also previously initiated a market inquiry in relation to the retail sector market in 2017 (particularly supermarkets and hypermarkets). We understand that this sector remains an area of concern for the CAK.
 - c. More recently, in 2019, the CAK initiated investigations in relation to bread retailers. The CAK is investigating compliance with product standards such as labelling requirements set by the national standards body (the Kenya Bureau of Standards).

4 Are dawn raids by the competition authority a high risk in your jurisdiction?

Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

The risk of dawn raids being undertaken by the CAK in Kenya is moderate.

As far as we are aware, there have only been two dawn raids undertaken – one back in 2015 in relation to the fertiliser sector in which at least two companies were raided, and one more recently in 2018 in relation to paint producing and distributing companies in Kenya in which several companies were raided.

Additionally, the CAK has been successful in gathering evidence using more conventional methods of investigation. In Kenya, dawn raids are normally used as a last resort as they are quite disruptive and are subject to the CAK obtaining search warrants in some cases. We expect that the CAK may undertake more dawn raids in future once the Proposed Search and Seizure Guidelines are promulgated into law.

MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

We are not aware of any notified transactions that has been prohibited by the CAK. Generally, the CAK does not withhold its approval, but where there are significant competition concerns, it can give an approval subject to the fulfilment of certain conditions by the merging parties. The conditions imposed largely relate to public interest concerns such as restrictions on termination of employees.

We are, however, aware of transactions in which the CAK has approved a merger subject to a condition that the merging parties dispose of certain sections of the business or outlets in certain geographic regions within a specified period of time post-closing. This was to address concerns identified by the CAK in their merger analysis that the transaction could result in the parties becoming dominant in certain geographic regions following the merger.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

The Proposed Merger Threshold Rules propose to amend the monetary thresholds applicable for merger applications as well as the filing fees for various applications. These rules also intend to change the parameters used by parties/the CAK in determining whether a transaction is notifiable or not. The change will be to require parties to consider the value of assets or turnover (whichever is higher) when undertaking their merger analysis, unlike currently where parties/the CAK only rely on the value of turnover.

The Proposed Merger Threshold Rules propose the following new fees:

Threshold (based on assets or turnover — whichever is higher) (Kenya Shillings)	Proposed New Merger Filing Fees (Kenya Shillings)	Current Merger Filing Fee (Kenya Shillings)
0 – 500 million	Zero (Exempt from notification)	Zero (May be Excluded from Provisions of Part IV of the Competition Act)
500 million – 1 billion	Zero (May be Excluded from Provisions of Part IV of the Competition Act)	
1 billion – 10 billion	1 million	1 million
10 billion – 50 billion	2 million	
Above 50 billion	4 million	

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

The Kenyan competition regime is suspensory and parties are prohibited from implementing a notifiable transaction until the CAK grants its approval.

Yes, the CAK has penalised parties for consummating notifiable transactions without obtaining prior CAK approval. The penalties imposed so far have generally ranged between 3% and 7% of the parties' combined turnover derived from Kenya.

Under law, the maximum financial penalty that can be imposed is 10% of the parties' combined turnover derived from Kenya. In addition, there are criminal sanctions that attract a fine of up to KES 10 million and/or imprisonment of up to five years.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases in which the CAK has fined any entities for failing to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

Most of the conditions imposed by the CAK relate to the retention of employees and restrictions against amending the terms of supplier and distributor contracts for a specified period of time.

However, more recently, the CAK has imposed noteworthy conditions on Vivo Energy Holding B.V. Limited ("**Vivo Energy**") in its acquisition of 100% of the issued share capital of Engen International Holdings (Mauritius) Limited ("**Engen**"). The merged entity was required to divest and sell one of Engen's retail outlets and allow the dealership agreement to expire for one of Vivo Energy's retail outlets.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

- a. The law requires the CAK to make a determination within 60 days of receipt of a notification, or of further information (as the case may be); and where there is a hearing conference, the CAK must give its decision within 30 days after the hearing conference. If the CAK deems the merger's issues to be complex, it can extend the timeline by a further 60 days. The time starts running from the date on which a complete merger notification or application for exclusion is received together with the appropriate fee, if applicable.
- b. On average:
 - i. the CAK generally takes 2 – 3 weeks to approve exclusion applications
 - ii. between 40 - 75 days to approve full non-complex merger filings; and
 - iii. between 60 - 120 days to approve full complex mergers

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

It should be noted that penalties imposed by the CAK are not publicly disclosed in all cases.

Based on publicly available information, the highest penalty we are aware of in respect of prohibited practices was a fine of KES 5 million imposed by the CAK in 2016 on Magnate Ventures for engaging in price-fixing. In 2018, the CAK imposed penalties in respect of a number of cases, but in a number of these the quantum of the penalties imposed was not published.



12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

In the 2017/2018 financial year, the CAK investigated 15 alleged restricted trade practices and instituted various remedies, including financial penalties. The investigations were carried out in various industries, including advertising and market research, manufacturing, air transport, agriculture, forestry and fishing, vehicle tracking and security, and petroleum.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

- a. Yes. Cartel conduct is criminalised under section 21 of the Competition Act. Section 21 prohibits restrictive trade practices (i.e. agreements between undertakings, decisions by associations of undertakings, decisions by undertakings, or concerted practices by undertakings, that have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya).
- b. Types of conduct listed in the Competition Act that would apply to cartels or be termed anti-competitive include:
 - directly or indirectly fixing purchase or selling prices or any other trading conditions;
 - dividing markets by allocating customers, suppliers, areas or specific types of goods or services;
 - collusive tendering; and
 - otherwise preventing, distorting or restricting competition.
- c. In addition to financial penalties, the Competition Act provides for imprisonment for a term not exceeding five years and a fine not exceeding KES 10 million as the criminal penalties for engaging in cartel or anti-competitive conduct. We are not aware of any instances where criminal sanctions have been imposed on any person or undertaking in respect of cartel or anti-competitive conduct.
- d. We are not aware of any criminal charges brought or convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018. However, we are aware of ongoing investigations for alleged cartel conduct in the paints industry.



REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Kenya is a member of the COMESA and the EAC, both of which have competition law regimes (the EAC Competition Act is, however, only partially operationalised).

In addition, Kenya is a member of the African Continental Free Trade Area (AfCFTA) which entered into force on 30 May 2019. As part of the Phase II negotiations, the member countries are now looking to a protocol on competition law.

15 If so, please comment on the frequency of your engagement with the regional body.

We interact very frequently with the COMESA Competition Commission when advising clients involved in multi-jurisdictional transactions that involve entities with operations in COMESA member states, or in relation to merger transactions in which the parties involved have operations in more than one COMESA country. The COMESA Competition Commission has also consulted us extensively when developing the COMESA competition regime.

With regard to the EAC, the competition regime is in force. However, it has not been fully operationalised and the EAC Competition Authority has only commenced some nominal operations (for instance, it has recently conducted a market study) but has not started receiving or processing applications in respect of mergers, restrictive trade practices or cartels. As such, we have only had nominal engagements with the EAC Competition Authority.

16 Do you have any views on the level of enforcement of the regional body?

The COMESA Competition Commission has been vigilant in enforcing the COMESA competition regime. Based on our interactions, it keeps abreast of current business transactions in the COMESA member states.

As mentioned in paragraph 15 above, the EAC Competition Authority has not commenced full operations. Therefore, we do not have any comments on its level of enforcement at this time.



17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

In respect of the COMESA competition regime, mergers are notifiable both to the CAK and to the COMESA Competition Commission. The same would be applicable in respect of the EAC regime after it becomes operational.

However, the Proposed Competition General Rules propose a single notification to the COMESA Competition Commission where a merger satisfies the conditions for notification under the COMESA competition regime. Once the merging parties have made the notification to the COMESA Competition Commission, the Proposed Competition General Rules propose that they only inform the CAK of the notification.



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■ MADAGASCAR

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The Senate and the National Assembly of Madagascar have adopted a new law modifying competition law on 22 and 29 June 2018. This law has not yet been published in the official gazette and is not applicable for now. The new law reforms Law No. 2005-020 on Competition, dated 27 July 2005, and its decree of implementation No. 2008-771, dated 28 July 2018. These two texts are, however, still applicable and currently govern competition in Madagascar.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The National Authority responsible for Corrective Commercial Measures ("**National Authority**"), in accordance with Notices No. 4 and No. 5, dated 19 September 2018, is investigating the pasta and blanket industries. The National Authority, established by Decree No. 2014-1726, is an administrative public institution attached to the Ministry of Trade. The National Authority is authorised to make inquiries into unfair commercial practices that are disruptive to the national economy. In addition, it can take corrective measures to stabilise an industry/sector in accordance with the rules of the WTO.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

On 6 June 2018, the National Authority publicly expressed concern in relation to the detergent powder industry. The market was deeply destabilised by unregulated imports from China endangering the local firms. The National Authority has temporarily added additional taxes on the importation of powder detergent in order to restore balance in the market.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No. As far as we know, the Competition Council ("**Council**") has not conducted any dawn raids since January 2018. The Council (established in 2015) has jurisdiction to hear all cases relating to competition, including monopolies, concentrations, abuses of a dominant position and potentially anti-competitive agreements. The Council is empowered to examine anti-competitive practices that may prevent, restrict or distort competition significantly in a market located within the territorial scope of the Unfair Competition Act. Furthermore, the Council is empowered to implement competition policy through market surveillance missions and investigations of anti-competitive conduct.



MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

As far as we know, since January 2018, the Council of Madagascar has not been notified of any merger.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

According to Article 27 of Decree No. 2008-771 implementing Law No. 2005-020, the submission of a merger notification to the Council has a suspensive effect for the merger project in Madagascar. The Council has a period of six months to make a decision. If the Council fails to make a decision within the 6 month period, the merger transaction will be deemed approved.

- 8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

As far as we know, since January 2018, the Council has not been notified of any merger.

- 9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

As far as we know, since January 2018 the Council has not been notified of any merger.

- 10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

As far as we know, on average, the Council takes two to three months to approve a non-complex transaction. We do not have the requisite information concerning a complex transaction, but it is usually approved within six months.

PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

As far as we know, since January 2018, neither the Council nor the courts of Madagascar have imposed any penalties on entities engaged in prohibited practices.

- 12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

As far as we know, no investigation has been initiated or made public by the Council since January 2018.



- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

No.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Madagascar is a member of COMESA. Accordingly, activities in Madagascar should be conducted with COMESA competition laws in mind.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

We have frequent engagements with the COMESA Competition Commission on several transactions.

- 16 Do you have any views on the level of enforcement of the regional body?**

As far as we know, the COMESA Competition Commission often seeks the advice of the Council in the context of merger notifications tabled before the COMESA Competition Commission.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

Yes, a merger will be notifiable both domestically and regionally, provided the notification requirements are met. The Council issued a notice on 27 March 2018 stating that the notification of a merger to the Council does not preclude or oust the competence of the COMESA Competition Commission to assess the merger transaction.



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■ MALAWI

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

As far as we are aware, there are no new amendments or guidelines relating to the competition legislation in Malawi, which have been proposed or enacted since January 2018.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The Competition and Fair Trading Act ("CFTA") contains the following market inquiry provisions:

- i. According to section 42 of the CFTA, the Competition and Fair Trading Commission ("CFTC") is required to keep the structure of production of goods and services in Malawi under review to determine where concentrations of economic power or anti-competitive trade practices exist and where the detrimental impact on competition and the economy outweigh the efficiency advantages, if any.
- ii. Under Section 37(1) of the CFTA, where an application for authorisation of a merger or takeover is made to the CFTC, the CFTC is entitled to require any participant in the market within which the merger or takeover is proposed to take place to grant to the CFTC access to records of sales accounted for by participants in the proposed merger or takeover, or by other leading enterprises in the relevant sector.

We are aware of market inquiries conducted in 2018 by the CFTC in its evaluation of merger/takeover authorisation applications – submitted by enterprises in the private security services industry and the poultry industry. However, we have no information on market inquiries in any sector/industry initiated by the CFTC in 2018 – without necessarily being triggered by merger/takeover authorisation applications.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

As far as we are aware, no.

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

We do not have any publicly available information/reports regarding dawn raids conducted by the CFTC since January 2018.

However, we note that section 46 of the CFTA gives investigative powers to the CFTC officers. This includes powers to, at all reasonable times and on the production of a search warrant obtained from a court of law, enter any premises and require any person in the premises to disclose all information at his/her disposal relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation. The CFTA does not define "reasonable times".



MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

As far as we are aware, no notified transactions have been prohibited by the CFTC in Malawi since January 2018. However, some mergers/takeovers have been authorised with conditions. See paragraph 9 below.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

As far as we are aware, no.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

The submission of a merger notification in Malawi is not suspensory. However, section 35 of the CFTA creates an offence for any person who, in the absence of authority from the CFTC, participates in effecting a merger or takeover that is likely to result in substantial lessening of competition in any market in Malawi. In addition, no merger or takeover made in contravention of the CFTA shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

The consequences of participating in a merger or takeover that is likely to result in substantial lessening of competition without prior approval from the CFTC are severe. Therefore, it is advisable for parties to apply for approval and await clearance before effecting such a merger or takeover.

A notable case regarding notification of a merger/takeover to the CFTC involved Barti Airtel and Airtel Malawi Ltd. The brief facts of the case are that in January 2013 the CFTC ordered Airtel Malawi Ltd to notify a merger to the CFTC for authorisation. However, Airtel Malawi Ltd refused to comply and applied for judicial review in the High Court of Malawi, claiming that the merger was beyond the jurisdiction and regulatory purview of the CFTC. The High Court confirmed that the CFTA does not create an obligation for parties to notify each and every merger/takeover to the CFTC.

In 2018, the Malawi Supreme Court of Appeal set aside the High Court's decision and upheld the CFTC's decision which required Airtel Malawi Ltd to apply to the CFTC for authorisation of the merger. We note that although the Supreme Court set aside the decision of the High Court, the setting aside was not based on the merits (or substantive issues) of the case, but rather on the incorrect procedure which Airtel had followed when commencing the case in the High Court.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We have no information on any such cases since January 2018.



9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

- i. In one merger transaction, the CFTC imposed a condition requiring the acquirer in the proposed acquisition of a company to operate the acquired company and a company already owned by the acquirer as independent companies with separate boards of directors. The CFTC also required that there should be no sharing of information between the two companies.
- ii. In another transaction, the CFTC authorised the acquisition of Crown Poultry Limited by Central Poultry Limited ("**Central Poultry**"), subject to Central Poultry reviewing its distribution arrangements for live chickens. It also required Central Poultry to make the following undertakings:
 - a. Central Poultry should maintain employment of the existing staff at both of the two entities post-acquisition; and
 - b. Central Poultry should enter into a Memorandum of Undertakings with the CFTC and commit to a customised compliance programme.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

In terms of section 39 of the CFTA, the CFTC is required, within 45 days of receipt of an application or the date on which the applicants provide the information sought by the CFTC, if that date is later, to make an order concerning an application for authorisation of a merger or takeover.

We note that the CFTC has sometimes "requested" permission to lengthen the review period even where the parties have submitted all the required information. The CFTC has requested this on the basis that it has not yet concluded its investigations.

In practice, the CFTC can take up to three months to issue a decision (regardless of the complexity of the transaction). This is normally because the CFTC's board only meets quarterly and in some cases, where the government delays appointing a board, there is no board to issue a decision. In certain circumstances, the CFTC may, at the request of the parties, issue a conditional or temporary authorisation that allows the parties to proceed with the merger until the final approval is issued by the board.



PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

Some of the penalties imposed by the CFTC are as follows:

- i. The CFTC ordered Castel Malawi Limited ("**Castel**") to pay a fine of MK35,415 million (approximately USD 48,000) for supplying the market with products containing foreign objects in violation of section 41(1) (e) of the CFTA.
- ii. The CFTC also ordered Castel to pay a fine of MWK 500,000 (approximately USD 675) for supplying the market with products containing foreign objects, also in violation of section 41(1) (e) of the CFTA.
- iii. Peoples Trading Centre Limited was fined MWK 500,000 (approximately USD 675) by the CFTC for engaging in misleading conduct in violation of section 41(1) (d) of the CFTA, which prohibits conduct likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or services.

- 12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

Yes. The CFTC commenced investigations against Alliance in Motion Global and other associated enterprises on allegations of engaging in pyramid selling of goods and services.

- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

Cartel conduct/anti-competitive conduct is criminalised in Malawi. However, we have no information of any criminal charges/convictions made against any persons/entities in 2018.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Malawi is a member of COMESA.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

We engage with the COMESA Competition Commission where necessary. Please see our answer to question 17 below.

- 16 Do you have any views on the level of enforcement of the regional body?**

No.



17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

If a merger is notifiable in Malawi, we only notify domestically.

According to the COMESA Competition Regulations and the COMESA Competition Rules on the Determination of Merger Notification Thresholds and Methods of Calculation, 2015, a merger is notifiable to the COMESA Competition Commission if it has a regional dimension (i.e. where both/either the acquiring entity and/or the target entity operate in two or more COMESA member states) and if the entities' combined annual turnover or combined assets, meet prescribed thresholds. If a merger is notifiable to the COMESA Competition Commission, there is no requirement to notify domestically also.



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■ MAURITIUS

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

There have not been any new amendments or guidelines relating to competition law in Mauritius since January 2018.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

- i. The Competition Commission of Mauritius ("**CCM**") has launched a market study into the pharmaceutical sector in Mauritius. The market study gives certain indications that competition in the pharmaceutical sector in Mauritius may not be working effectively for the benefit of consumers and the health sector in general. In particular, the market study is intended to look into the regulatory framework governing pharmaceutical trade in Mauritius and the ease of entry of generic alternatives to existing pharmaceutical drugs/products for human consumption into the market.
- ii. Furthermore, there is a current investigation launched by the CCM to look into certain restrictive business practices that may exist in the sector for offering real estate classified web portal services.
- iii. Also, the CCM is conducting seven investigations that are confidential and are mainly cartel inquiries. The details of these confidential investigations will be disclosed as and when deemed appropriate by the CCM.

Other market studies have been conducted in the past in various sectors, such as the cement industry, the market for secondary school books and pricing of mobile-telephony services, among others.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

Not recently. However, the CCM has previously noted concerns and initiated inquiries into various sectors, including the sector for pricing of mobile telephony services, cross-border money transfer services, payment cards, the construction industry, the chicken industry (investigation into possible restrictive business practices), the beer industry (investigation into potential collusive agreements in relation to the manufacture and supply of beer in Mauritius), travel agent fees, the cement industry, and the importation of slaughter of cattle in Mauritius.

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018

Dawn raids are not a high risk in Mauritius. As far as we know, the CCM has not conducted any dawn raids since January 2018.



MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No, we are not aware of any such transactions.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No, we are not aware of any such proposals.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

No. In terms of the Competition Act 2007 of Mauritius ("**Act**"), parties to a merger are under no obligation to notify the CCM. The Act, nonetheless, provides that parties to a merger may voluntarily notify the CCM of such merger.

- 8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

We are not aware of any such cases.

- 9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

We are not aware of any such cases.

- 10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

In terms of the Competition Commission Rules of Procedure 2009 ("**Rules**"), the duration of a merger investigation shall not exceed six months. Practically, decisions for non-complex transactions are made by the CCM within 30 days, while decisions for complex transactions may take between three to six months.

PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

We are not aware of any such cases.

- 12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

We are not aware of any such investigations.

- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

No, cartel conduct/anti-competitive conduct is not criminalised in Mauritius.



REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Mauritius is a member of COMESA. Accordingly, activities in Mauritius should be conducted with COMESA competition laws in mind.

15 If so, please comment on the frequency of your engagement with the regional body.

We have frequent engagements with the COMESA Competition Commission on several transactions.

16 Do you have any views on the level of enforcement of the regional body?

Mauritius is yet to harmonise its domestic laws with that of COMESA. The COMESA Competition Regulations and the COMESA Competition Rules 2004, for instance, have merger control provisions which are different from the Act. The CCM is currently working on assessing how and to what extent COMESA competition laws may be domesticated into the laws of Mauritius. Notwithstanding this, the COMESA Competition Commission typically notifies the CCM of mergers which may have an effect in Mauritius. In this instance, the CCM generally gathers information from stakeholders on the proposed transaction and provides its views on the effects of the transaction on the Mauritian market. In assessing the transaction, the CCM usually considers the impact of the merger on the state of competition in Mauritius. The COMESA Competition Commission then factors in the views of the CCM in determining whether or not a particular merger is likely to substantially prevent or lessen competition within the Common Market. To date, the CCM has reviewed and given its views on more than 65 mergers notified to the COMESA Competition Commission. The COMESA Competition Commission is now embarking on other areas of competition enforcement in relation to Mauritius. For instance, it has previously requested the views of the CCM on two matters regarding requests for exemptions for vertical agreements notified by parties to COMESA.

Therefore, it is expected that, going forward, the COMESA Competition Commission will have a more prominent role in overseeing cross-border competition issues and in ensuring that competition at the Common Market level is safeguarded.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

It is not mandatory to notify a merger in Mauritius. However, a merger will still need to be notified to the COMESA Competition Commission if the notification requirements are met.



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■ MOROCCO

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No specific new amendments or guidelines have been proposed or enacted since January 2018. While this is the case, the year 2018 saw the appointment of the president and subordinate members of the Competition Council ("**Council**"). This critical development brought the Council into full operation, enabling the effective enforcement of Morocco's competition framework

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

No.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, the Council recently became operational. It remains to be seen whether it will employ dawn raids as an effective tool for competition law enforcement. It is noted that the competition law of Morocco makes provision for dawn raids.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No, as the Council recently became operational.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

Yes. However, the Council may, where justified, permit merging parties to implement a merger prior to the close of the assessment period. To date, no transactions have been notified to the Council and no parties have been prosecuted for gun-jumping/prior implementation of a notifiable transaction as the Council recently became operational.



- 8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

None.

- 9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

No.

- 10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

Article 15 of Law No. 104-12 on the Freedom of Prices and Competition ("**Law**") grants the Council a period of 60 days from the date of notification within which to assess a proposed transaction and make a finding. In the event of an information request from the Council, the running of the period is interrupted and shall recommence upon receipt of the additional information requested by the Council.

Article 17 of the Law grants the commission an extended period of up to 90 days within which to assess a proposed transaction and make a finding where the proposed transaction has been categorised as requiring an in-depth review.

In practice, the Council tends to assess and make a finding on proposed transactions (whether complex or non-complex) within six to eight weeks of the date of notification, unless a second-stage (i.e., in-depth) review is required.

PROHIBITED PRACTICES

- 11 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

No.

- 12 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

Yes, cartel conduct is criminalised in Morocco However, we are not aware of any criminal charges brought against any persons/entities given the relative infancy of the Council.

REGIONAL BODIES

- 13 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

No.

- 14 If so, please comment on the frequency of your engagement with the regional body.**

N/A.



15 Do you have any views on the level of enforcement of the regional body?

N/A.

16 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

A merger is required to be notified domestically in Morocco.



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■ MOZAMBIQUE

MOZAMBIQUE

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The legal framework on competition encompasses the Competition Act, approved by Law 10/2013, of 11 April 2013, and the Competition Regulations, approved by Decree No. 97/2014, of 31 December 2014 ("**Competition Act**").

Since January 2018, specific regulations on competition in the air transport industry have been enacted by Decree No. 35/2018, of 30 May 2018 ("Decree"). The Decree is aimed at governing competition in the air transport sector and prohibited practices in this sector.

No other amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The Competition Authority ("**Authority**") is not yet operational; hence, no market inquiries have been initiated.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No. The Authority is not yet operational.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Dawn raids are permitted by the Competition Act. However, the Authority is not yet operational.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

No. The Authority is not yet operational.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No. The merger filing fees that will be payable to the Authority once it becomes operational have been approved under Ministerial Decree No. 79/2015, of 5 June 2015.



7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

Yes, a merger notification in Mozambique is deemed suspensory to the extent that merger operations subject to prior notification cannot be completed/implemented prior to the Authority's "no opposition decision;" which can be made to the merging parties by the Authority by way of a notification, while it can also be implied in the event that a certain time lapses without the Authority notifying the merging parties of its decision regarding the proposed merger.

However, it is important to note that the Authority is not yet operational; thus, no cases have been brought against any entities' gun-jumping/prior implementation.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

None. The Authority is not yet operational.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No. The Authority is not yet operational.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Practically, it is not possible to assess this given that the Authority is not yet operational.

However, in terms of the Competition Act, the Authority has a 60-day period to decide on transactions once filed. No distinction is made between complex and non-complex transactions. Failure by the Authority to issue a decision within the 60-day period will be deemed approval of the transaction.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

The Authority is not yet operational. Therefore, to date there are neither prohibited practices that have been investigated nor penalties imposed for competition law violations.

12 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

No. The Authority is not yet operational.



13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

No, cartel conduct/anti-competitive conduct is not criminalised in Mozambique. However, criminal liability may arise where the relevant anti-competitive conduct involves actions that may be deemed a crime, such as fraud, embezzlement, abusive conduct, etc. Accordingly, even though the Competition Act does not expressly provide for criminal liability for anti-competitive conduct, the actual conduct/practice may entail certain actions that are criminalised under different laws of Mozambique.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Mozambique is a member of the Southern African Development Community ("SADC") the members of which signed and approved the Declaration on Competition and Consumer Policies in 2009 ("**Declaration**"). Under the Declaration, SADC members undertook to set up a system for effective cooperation in the application of competition and consumer protection laws of each member state. Under the Declaration, the Competition and Consumer Policy and Law Committee ("**CCOPOLC**") was established and is tasked with fostering cooperation and dialogue among competition authorities and encouraging the convergence of legislation.

CCOPOLC aims at facilitating cooperation and consultation in what concerns competition-related matters but does not operate as a regional body aimed at controlling anti-competitive practices within the SADC area.

15 If so, please comment on the frequency of your engagement with the regional body.

N/A

16 Do you have any views on the level of enforcement of the regional body?

N/A

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Once the Authority becomes operational, mergers will be notifiable domestically.



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 **NAMIBIA**

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

The Namibian Competition Commission ("**NaCC**") introduced a Corporate Leniency Programme ("**CLP**") on 12 October 2018.

The CLP outlines a process through which the NaCC will grant a self-confessing cartel member, who is first to approach the NaCC, conditional immunity for its participation in cartel activity.

A leniency applicant must cooperate with and assist the NaCC with its investigation against other cartel members in exchange for immunity, i.e., not being prosecuted by the NaCC. Immunity, however, does not protect the leniency applicant from criminal or civil liability resulting from the cartel activity.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The NaCC does not have market inquiry powers in terms of the current Namibian Competition Act ("**Act**"), although we understand that the new proposed draft Bill makes provision for market inquiry powers.

The NaCC have previously conducted market studies pertaining to the automotive, franchising, and retail industries in Namibia. We understand that, during 2019, the NaCC will research the banking and housing industries.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

Apart from widespread investigations that relate to various market players in various industries as stated herein, the NaCC has issued statements pertaining to online advertising platforms for the sale of pre-owned vehicles.

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

No dawn raids have been undertaken by the NaCC since January 2018. The first and, to date, only dawn raid undertaken by the NaCC was performed by the NaCC on 15-17 September 2016 on Puma Namibia at their main office in Windhoek and their refueling facility at the Eros Airport in Windhoek. The investigation involves a complaint of excessive pricing by Puma Namibia with regard to jet fuel and avgas products sold at the Eros Airport and Ondangwa Airport refueling facilities. Puma Namibia objected to the issue and execution of the warrant in question. The main matter was heard by the High Court of Namibia on 6 September 2018 and judgment was issued on 8 November 2018. The court ordered that the warrant issued previously was set aside with costs and that all hard copy documents seized, as well as all electronic data seized/copied, be returned to Puma Namibia within two days of the order. The NaCC has since appealed to the Supreme Court of Namibia against the judgment by the High Court.



MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

The proposed merger application between Namibia Post and Telecom Holdings Ltd and Samba Dutchco B.V. regarding the acquisition of the latter's 34% interest in the largest Namibian mobile operator, Mobile Telecommunications Ltd, was initially prohibited by the NaCC during 2017. In terms of the Act (section 49), a party to a merger may make an application to the Minister of Industrialisation, Trade and SME Development ("**Minister**"), to review the decision of the NaCC. The Minister must, within the specified time, make a determination either overturning, amending or confirming the decision of the NaCC. In the matter specified, the Minister on 6 March 2018 overturned the decision of the NaCC, which prohibited the merger between the parties subject to specified conditions.

We are not aware of any merger applications that have been prohibited by the NaCC since January 2018.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

No amendments to merger filing fees and/or monetary thresholds have been effected since January 2018.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

No, the submission of a merger notification is not suspensory under the Act. Implementation of a merger prior to approval by the NaCC is prohibited under the Act (section 44(1) read with section 51, as well as section 53).

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases since January 2018 in which the NaCC fined entities for failing to comply with merger conditions. The NaCC confirmed that since January 2018 no entities have been fined for failing to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

The NaCC concluded in the that the proposed merger between United Property Management (Pty) Ltd and JN Hamman Beherende Beleggings (Pty) Ltd, regarding the acquisition of Safari Court Hotel, would result in the merged undertaking acquiring a dominant position in the market for hotel accommodation with star 3 to 5 grading.



The NaCC approved the merger subject to various conditions, including requiring the acquiring undertaking to enter into a management agreement with an independent hotel operator and vest control over Safari Court Hotel to such hotel operator with within 24 months of the implementation of the transaction for a period of 10 years following implementation of the transaction.

The parties to the aforesaid transaction elected not to implement the transaction, seemingly due to the proposed conditions.

In the merger application in relation to the acquisition of Rössing Uranium Ltd ("**RUL**"), a Namibian uranium mine, by China National Uranium Corporation ("**CNUC**"), the NaCC imposed certain novel conditions, related to employment, procurement, transfer pricing, and other notifications. These include the following:

Employment:

- i. No job losses as a result of the merger for a period of two years following implementation, and the pre-merger conditions of employment shall not be altered to less favourable conditions post-merger.
- ii. RUL must maintain a ratio of at least 95% local employees to 5% foreign employees until the expiry of the life of the mine (ratio will be based on an average percentage calculated over the applicable reporting period).
- iii. RUL must maintain, at management level, a ratio of at least 95% local employees to 5% foreign employees, until the expiry of the life of the mine (the ratio will be based on an average percentage calculated over the applicable reporting period in relation to the composition of management).
- iv. RUL shall not employ any non-Namibian person at management level on any basis other than on a two-year fixed term contract.
- v. No changes shall be introduced to RUL's procurement policy that may have the effect of providing less favourable terms to local suppliers until the expiry of the life of the mine without the Commission's prior written approval.
- vi. For procurement of any services, goods, or products below a value of NAD 250,000 per project, the following shall apply: The merged undertaking shall procure a minimum of 80% of any such services, goods or products from companies which: (a) are majority Namibian owned and registered; and employ a minimum of 75% Namibian citizens



Transfer pricing:

- i. RUL shall conduct all transactions with a connected person in accordance with the arm's length principle and furthermore in accordance with section 95A of the Income Tax Act No 24 of 1981 (as amended, and as may be amended from time to time) read with Practice Note No 2 of 2006 and any determination, directive, rules, or regulations which may become applicable in this regard. The 'connected person' is not defined in the conditional approval.
- ii. If and when RUL is audited by the Department of Inland Revenue in respect of allegations of transfer pricing, as provided for in section 95A of the Income Tax Act 24 of 1981, RUL shall submit the outcome of such audit to the NaCC within 10 business days of the report becoming available to RUL.

Future notification:

Any member of the acquiring group who wishes to acquire a controlling interest in a company that is the holder of an exclusive prospecting licence or mining licence (target undertaking) ("**Proposed Transaction**"), and the Proposed Transaction's thresholds falls below the requisite merger thresholds, shall notify the Commission of the Proposed Transaction prior to implementation thereof.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

For non-complex transactions, the NaCC generally takes 4-6 weeks to issue a determination, although in some instances less than four weeks. For complex transactions, the NaCC has taken up to six months to issue a determination.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

Widespread investigations have been launched and remain ongoing against various umbrella pension funds, as well as locally operated pharmacies.

Preliminary findings of contraventions of the Act have been made (i) against various insurers and panel beaters in the widespread auto parts investigation, and (ii) against insurers and automotive glass repairers in the automotive glass repair investigation, and (iii) against Air Namibia, the national airline carrier, for predatory pricing on the Windhoek-Cape Town route.

In the auto parts investigation, two consent agreements have been entered into with the NaCC by insurers Hollard and Santam and we expect some further consent agreement and/or outright penalties to be issued by the NaCC in the upcoming months. No penalties or consent agreements have been issued or entered into, as the case may be, in relation to the glass repair investigation.



12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

The NaCC does not publicise that it is embarking on any specific investigation upon inception of the investigation. The NaCC generally does publicise the outcome of an investigation once it has made a preliminary finding. Widespread investigations have been launched and remain ongoing against various umbrella pension funds, as well as locally operated pharmacies. Preliminary findings of contravention of the

Namibian Competition Act have been made (i) against various insurers and panel beaters in the widespread auto parts investigation, and (ii) against insurers and automotive glass repairers in the automotive glass repair investigation, and (iii) against Air Namibia, the national airline carrier, for predatory pricing on the Windhoek-Cape Town route.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Conduct prohibited under the Act (section 53) does not amount to criminal liability. However, by way of an example, cartel conduct or anti-competitive conduct that may have a corruption or bribery element may lead to prosecution and conviction under the Namibian Anti-Corruption Act and other legislation.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

The NaCC is not a member of any regional competition law body or regime.

The NaCC has entered into memorandums of understanding with the South African Competition Commission, and is also a member to the SADC Secretariat working group for competition law, whereby the relevant authorities undertake to cooperate *inter alia* in matters that have or may have cross boundary competition effects.

15 If so, please comment on the frequency of your engagement with the regional body.

N/A – see paragraph 14.

16 Do you have any views on the level of enforcement of the regional body?

N/A – see paragraph 14.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

N/A – see paragraph 14.



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 **NIGERIA**

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The President of Nigeria signed the Federal Competition and Consumer Protection Bill into law ("**Competition Act**") in February 2019. The Competition Commission ("**Commission**") and Competition Tribunal have also been established to enforce the Competition Act in Nigeria.

From a merger-control perspective, the Competition Act and the newly formed Commission will take over the role historically played by Nigeria's Securities and Exchange Commission ("**SEC**") once the Commission is fully operational. Currently, all merger notifications will continue to be notified to the SEC in terms of existing guidelines. As a result of the introduction of the Competition Act, the SEC now has additional powers and its jurisdiction now extends to review of merger filings (although with the input of the Commission) until new merger thresholds are published and the Commission is fully operational.

The Competition Act applies broadly to all commercial activities taking place in Nigeria, as well as to conduct outside of Nigeria involving a Nigerian resident, a company incorporated in Nigeria or products being sold into Nigeria. Additionally, an acquisition or change of control of a business asset outside of Nigeria, resulting in a change of control of a business or asset in Nigeria will fall within the ambit of the Competition Act.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

No. The Commission recently became operational.

However, previously, sector-specific regulators have conducted market inquiries to inform policy. For instance, the Nigerian Communications Commission conducted a series of market inquiries between 2016 and 2017 for the purpose of determining its policy for the regulation of over-the-top ("**OTT**") services in the telecommunications industry.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No. The Commission recently became operational.



MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

We are not aware of any transactions that have been prohibited since January 2018.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

We understand that the merger notification regime in Nigeria, as contemplated by the Competition Act is a suspensory regime (i.e., parties must obtain clearance of the merger before implementing same in Nigeria).

- 8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.**

We are not aware of any such cases since January 2018.

- 9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?**

We are not aware of any such mergers since January 2018.

- 10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?**

We are not in a position to advise on timing as we have not been able to procure a copy of the Competition Act.

PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

None.

- 12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

The Commission has not conducted any investigations given that it has recently become operational. However, there have been sector-specific investigations in Nigeria.



- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

We are not in a position to advise on criminal sanctions as we have not been able to procure a copy of the Competition Act.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Nigeria is a member of the ECOWAS. ECOWAS has a competition regulatory framework regime. However, Nigeria has not yet domesticated the ECOWAS competition regulations. Nonetheless, activities in Nigeria should be conducted with ECOWAS competition laws in mind.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

We have not had engagements with the ECOWAS given its relative infancy (it was established in July 2018).

- 16 Do you have any views on the level of enforcement of the regional body?**

Given that Nigeria has not yet domesticated the ECOWAS competition regulations, enforcement by the ECOWAS Competition Authority in Nigeria is likely to be minimal.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

Mergers must be notified domestically.



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■ SOUTH AFRICA

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

The Competition Amendment Bill, B23B-2018, aimed at amending the Competition Act No. 89 of 1998, as amended ("**Competition Act**"), was signed into law by the President of South Africa on 13 February 2019 ("**Amendment Act**"). Significant changes brought in by the Amendment Act include:

- **Buyer Power:** A prohibition on dominant firms in designated sectors from imposing unfair prices or trading terms on Small, Medium and Micro-sized Enterprises ("**SMMEs**") or businesses owned or controlled by historically disadvantaged persons ("**HDPs**").
- **Price Discrimination:** While in general, differential pricing remains an infringement only if it "substantially prevents or lessens competition," a different standard is applied if the differential pricing is to SMMEs or HDPs. Such pricing will be an infringement if it impedes "effective participation" by SMMEs or HDPs.
- **Mergers:** Additional considerations have been added in the assessment of whether a merger will substantially prevent or lessen competition, including: the extent of common ownership and common directorship in competing firms and other mergers undertaken by the merging parties within a recent period. In addition, the Competition Commission ("**Commission**") and Competition Tribunal ("**Tribunal**") must consider the impact on SMMEs and HDP firms and the promotion of a greater spread of ownership.
- **Foreign mergers and national security:** The acquisition of a South African business by a foreign acquiring firm can be blocked by a government committee (to be constituted) if the merger may have an adverse effect on the national security interests of the Republic of South Africa.
- **Market Inquiries:** An expansion of the market inquiries provision and the powers of the Commission in the context of market inquiries, including the ability to make binding decisions arising out of market inquiries. There are additional factors for the Commission to consider when deciding what action to take pursuant to a market inquiry. In deciding whether any feature of a market impedes competition, the Commission must have regard to the impact of the adverse effect on competition on SMMEs and HDPs
- **Penalties:** The maximum penalties for repeat offenders of the Competition Act have increased from 10% to 25%. In addition, the Tribunal can impose the penalty on controlling firms if they had knowledge of the prohibited conduct. All prohibited practices are now subject to a penalty for a contravention – the "yellow card" warning is now removed for certain infringements, making a first time offender susceptible to an administrative penalty.



The Amendment Act allows for greater participation by the Minister for Economic Development (now the Minister of the Department of Trade & Industry) through the potential for intervention in mergers on public interest grounds, through the ability to appeal merger decisions, and through being able to require the initiation of market inquiries. Moreover, the minister is given extensive opportunity to direct the enforcement of provisions through issuing regulations on a range of issues, including the calculation and determination of an "excessive price"; designating sectors to which the buyer power provisions apply and dealing with the "relevant factors and benchmarks" to be applied in determining if prices or conditions are unfair; and setting out factors and benchmarks for determining whether a dominant firm's pricing impedes the participation of SMMEs or HDPs.

The Amendment Act also imposes reverse onuses such as:

- requiring dominant firms to show, in the case of a "*prima facie*" case of price discrimination that the differential pricing does not impede effective participation of SMMEs and HDPs
- in the case of a "*prima facie*" case of contravening the buyer power provision, that its purchase prices or trading conditions are fair; and
- in the case of "*prima facie*" excessive pricing, that a price is reasonable.

In general, the amendments call on South African businesses to conduct themselves in a manner that ensures inclusive participation in the economy and does not impede the ability of SMMEs and HDPs to participate in the economy in order to facilitate better competitive outcomes and a transformed economy.

Amendments relating to abuse of dominance, merger control, administrative penalties, market inquiries and exemptions were signed into effect on 12 July 2019. Additional amendments are expected to come into effect from November 2019 following publication of draft regulations and public consultations.

Furthermore, on 2 April 2019, the Commission issued its "*Guidelines for the determination of penalties for failure to notify mergers.*" The Commission hopes that these guidelines will provide transparency, certainty and objectivity in how the Commission will determine administrative penalties in cases of failure to notify and prior implementation of notifiable transactions.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

The Commission has not initiated any market inquiries since January 2018. However, the Commission has released the following provisional findings and recommendations in relation to the following market inquiries since January 2018:

- Health Market Inquiry: Final findings and recommendations report released on 30 September 2019;
- Retail Market Inquiry: Provisional report released on 29 May 2019.
- Data Services Market Inquiry: Summary of provisional findings and recommendations released on 24 April 2019; and



3 Has your competition authority publicly expressed concern in relation to any industry/sector?

The Commission has expressed concerns in relation to the healthcare, data and retail sectors in its provisional findings of the market inquiries referred to above. In particular, the Commission found that there are features or a combination of features of the above sector that may prevent, distort or restrict competition within these sectors.

In addition, the Commission seems to monitor concentration levels in what has become known as "priority sectors" to the Commission. The priority sectors are:

- information communication technologies
- energy
- financial services
- food and agro-processing
- infrastructure and construction
- intermediate industrial products
- mining
- pharmaceuticals; and
- transport

In respect of the above sectors, the Commission's study has revealed that the average market share of dominant firms in these sectors is approximately 52.5% (and where the study has narrowed down the market shares to only firms that are considered presumptively dominant, the market share across the above sectors is approximately 62%).

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

Yes, dawn raids by the Commission are a high risk in South Africa. The Commission has used and continues to use dawn raids as a tool to gather evidence of anti-competitive conduct by businesses in South Africa. All businesses are potentially at risk of a dawn raid by the Commission, at any time and without notice.



MERGER CONTROL DEVELOPMENTS

5 **Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

The competition authorities have prohibited a number of transactions since January 2018 on both competition and public interest grounds.

In general, the relevant issues warranting prohibition were:

- increased likelihood of coordinated effects through the exchange of competitively sensitive information
- increased ability and incentive to foreclose market participants at downstream levels;
- detrimental effects on public interest, with particular reference to the ability of national industries to participate in international markets;
- likelihood of the transaction to result in unilateral effects, which would manifest in the form of increased prices or reduction in the rate of price reductions as well as reduction in the quality or rate of innovation
- high combined post-merger market shares; and
- likelihood that the transaction would limit customers' bargaining power and increase barriers to entry

A notable trend in relation to both conditional approvals and prohibition cases is an increased participation of third parties in the merger control process.

6 **Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

Yes, on 4 December 2018, the Minister of Economic Development, Ebrahim Patel, published the amendment to Rule 10(5) of the Rules for the conduct of proceedings in the Competition Commission, which increased merger filing fees from ZAR 150,000 to ZAR 165,000 for an intermediate merger and from ZAR 500,000 to ZAR 550,000 for a large merger. These new filing fees were effective from 1 January 2019.

7 **Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The submission of a merger notification is suspensory in South Africa.

The Commission has prosecuted gun-jumping cases before the Tribunal in 2018 on the basis that the parties to the transaction had, prior to approval of the transaction, access to strategic information, interacted with customers and suppliers, become involved in the operations of the target business (including the finalisation of employment contracts, attending meetings and changing the name of the business and communicating the new name to customers).



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases since January 2018 in which parties have been fined for failure to comply with merger conditions. However, there have been cases in which third parties have sought to hold merging parties to account post-approval. In these cases, the merging parties have an opportunity to remedy a credible omission or breach of merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

The types of conditions that the authorities have imposed include:

- divestiture orders;
- obligations to continue to procure from small to medium sized enterprises or entities controlled by historically disadvantaged individuals;
- setting-up development funds that facilitate entry into or participation within a market;
- the imposition of a moratorium on retrenchments for a certain period of time post-merger;
- obligations to provide training and other assistance (e.g., career guidance, counseling etc.) to employees who are retrenched as a result of a merger;
- obligations to continue supplying customers on certain agreed terms for a period of time post-merger; and
- commitments to invest in manufacturing facilities with a view to increasing export capacity.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

	Statutory Limit	Average Approval Period in Practice (2018 - 2019)
Small & Intermediate Mergers	60 business days	<ul style="list-style-type: none"> • Non-complex: approximately 30 - 40 business days • Complex: 60 business days
Large Mergers (includes Tribunal hearing process)	Indefinite	<ul style="list-style-type: none"> • Non-complex: approximately 50 business days • Complex: 4 - 6 months



PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

- In March 2018, the Commission and Media24 entered into a settlement agreement in terms of which Media24 admitted to engaging in cartel conduct. It agreed to pay a penalty of ZAR 14 million. While the penalty is comparatively small in the context of the quantum of penalties imposed in South African antitrust history, it bears noting that Media24 also agreed to the following remedies:
 - It will contribute ZAR 4,978,401.21 (four million nine hundred and seventy eight thousand, four hundred and one rand and twenty-one cents) to the Economic Development Fund over a three year period.
 - It will also provide 25% bonus advertising space for every rand of advertising space bought by qualifying small agencies, over three years and capped at ZAR 35 million annually.
- In April and May 2018, MTV and various other media companies entered into settlement agreements with the Commission for cartel conduct and agreed to similar conditions/remedies as the above. Similar remedies and fines were imposed again on media companies in April 2019.
- The highest fine imposed by the Commission for cartel conduct since January 2018 is ZAR 98 million, imposed on Kawasaki Kisen Kaisha Limited.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, the Commission has publicised several new investigations on firms alleged to have engaged in prohibited practices.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, cartel conduct/anti-competitive conduct is an offence punishable by imprisonment, fine or both under the Competition Act. We are not aware of any criminal charges that have been brought against any persons since January 2018. However, the Commission is currently seeking the criminal prosecution of three vessel owners who ferry passengers between the Robben Island Museum and the V&A Waterfront in Cape Town for engaging in cartel conduct.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

No.



- 15 **If so, please comment on the frequency of your engagement with the regional body.**
N/A.
- 16 **Do you have any views on the level of enforcement of the regional body?**
N/A.
- 17 **If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**
Mergers are notifiable domestically in South Africa.



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SUDAN

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No new amendment or guideline relating to competition legislation has been proposed or enacted since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The authority has never initiated any market inquiries in relation to any sector/industry.

According to the Regulation of Competition and Prevention of Monopoly Act 2009 ("**RCPM Act**"), one of the functions of the Competition and Prevention of Monopoly Council ("**Council**") is to monitor the circulation of commodities and services in the market.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

No.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Currently, no. The Council has never conducted any dawn raids.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

The Council has prohibited one notified transaction since January 2018. It however refused to reveal further information in this regard.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

No.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The submission of a merger notification is suspensory in Sudan. The authority has not brought any case regarding gun-jumping and/or prior implementation of a notifiable transaction since January 2018.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any case since January 2018 in which the Council fined any entities for failing to comply with merger conditions.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

No merger subject to novel or otherwise noteworthy conditions has been approved since January 2018.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

According to the RCPM Act, the Council shall issue its decision regarding the merger within three months from the date of receiving the merger notification. Otherwise, the merger shall be deemed approved by the Council. This applies to complex and non-complex mergers.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

No penalties have been imposed on any entities regarding prohibited practices such as cartel conduct, abuse of dominance, etc. since January 2018.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

No.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes. Cartel conduct/anti-competitive conduct is an offence punishable with imprisonment, fine or both under the RCPM Act.

No person or entity has been prosecuted for engaging in any anti-competitive conduct since January 2018.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Sudan is a member of COMESA. Therefore, activities in Sudan should be conducted with COMESA competition laws in mind.



15 If so, please comment on the frequency of your engagement with the regional body.

We have not engaged with COMESA in relation to Sudan.

16 Do you have any views on the level of enforcement of the regional body?

Although Sudan is a member of COMESA, the impact of this affiliation has not been clearly reflected in relation to antitrust. For example, the RCPM Act has not yet been amended to conform to the COMESA Competition Regulations 2004. Therefore, Sudan must become more effective in implementing efficient antitrust laws and measures in order to benefit from its membership in COMESA.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Pursuant to the RCPM Act and the Companies Act 2015, any merger would require notification domestically.

This will apply if the parties are Sudanese.

If the merger involves a party from any country that is a member of COMESA, notification will be made domestically and regionally to the COMESA Competition Commission.



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 **TANZANIA**

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

- The Fair Competition Procedure Rules has been repealed and replaced by the Competition Rules 2018 which came into force on 27 July 2018 vide Government Notice("GN") No. 344
- The Competition (Amendment) Rules, 2019, which is to be read together with the above GN. It came into force on 22 March 2019 vide GN number 222. The major amendment mandates the commissioner to issue a second Extension Certificate to a party who notified the merger as per section 11 (4) (b) of the Fair Competition Act, 2003.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

We are informed that there has been an investigation into the tobacco industry, which has culminated in a fine being imposed on certain players. There is also an ongoing investigation into the oil industry.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

Not that we are aware of. However, the competition authority has embarked on a sensitisation mission across the country on mergers and reporting of counterfeit goods.

4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

We are aware that dawn raids have been conducted on counterfeit products. Telecom equipment, mobiles phones, solar equipment, perfumery, seeds, etc. have also been seized by the authority.

MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

We are not aware of any such prohibitions, although we know that the merger of two automobile manufacturers in Tanzania was rejected a year or so ago.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

We are not aware of any.



7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

After a merger application has been lodged, consummation of the merger is not allowed until a final decision is made. We are not aware of any cases brought against entities for gun-jumping as these are not held in public (if held at all). We are, however, aware of one instance where a newspaper article seemed to indicate that the merger had been consummated and the Fair Competition Commission ("FCC") issued a stern warning. It turned out that the newspaper article was wrong so no further action was taken.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

Again, these fines are not publicised. However, we are aware that in the tobacco industry companies were fined billions of shillings, which they have appealed. The oil companies were also fined billions of shillings, most of whom settled the matter out of court.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

This is not publicly known. Hence, we are not able to answer.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Non-complex mergers take 50 to 75 days. Complex mergers take 75 to 120 days.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

There have been very few penalties imposed since January 2018, however, the exact amounts are unknown.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Not that we are aware of.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, it is criminalised as is the case in other jurisdictions. We have not seen any such criminal action being taken. Most of the time, the authority has imposed penalties. In any case, a lot of the work the antitrust authority does in Tanzania in such cases is not in the public domain.



REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Tanzania is a member of EAC.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

EAC meetings between the antitrust authorities are held every quarter, though we are informed they are not as regular as this.

- 16 Do you have any views on the level of enforcement of the regional body?**

The EAC Competition Authority has so far developed a fully operational competition authority by appointing its first competition commissioners last year. Competition law activity has therefore accelerated within EAC and soon the full functioning of the mandatory merger control regime will be seen. Currently, it is not fully operational.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

At the moment, only domestically. The regional authority is not fully functional. Once functional, mergers with cross-border effect in the EAC will require both domestic and regional approval.



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TUNISIA

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No new amendments or guidelines relating to the competition legislation have been proposed or enacted since January 2018.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

As far as we are aware, the authority did not initiate any market inquiries in relation to any sector or industry.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

As far as we are aware, it has not done so.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Dawn raids represent a medium risk. We are not aware of any dawn raids conducted since January 2018.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

As far as we are aware, no.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

As far as we are aware, no.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

The submission of a merger notification is not suspensory, provided that the parties do not take any measure that would make the merger irreversible or that would alter the market situation on a lasting basis.

We are not aware of the Tunisian Competition Council ("TCC") bringing any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

As far as we are aware, there are no such cases.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

As far as we are aware, no.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The statutory deadline within which the TCC must make a decision is three months from the delivery of the acknowledgement of receipt, provided all the required documents were submitted to the TCC. If no response has been provided by the TCC within three months, the transaction is deemed to be approved. However, in certain cases the TCC may require additional documents or information, in which case the prescribed time frame is halted.

In practice, the procedure may take 6 to 12 months for a complex transaction and 6 to 8 months for a non-complex transaction, provided all required documents and information have been provided.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

As far as we are aware, the TCC is expected to sanction nine companies active in the vegetable oil refining industry, with a fine of TND 25,000 (approximately USD 8,438) each, for violating the rules of competition and engaging in prohibited practices. The TCC investigated the companies after discovering an agreement between them aimed at blocking a call for tenders launched by the National Agency of Oil. These companies attempted to prevent the opening of the sector to competition.

their goal was to maintain market dominance and preserve related advantages.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

As far as we are aware, it has not launched or publicised any new investigations.



- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

Yes, cartel conduct/anti-competitive conduct is criminalised.

Following the decision of the union of private clinics in May 2018 to proceed with a unilateral increase of the rates of medical works and services in private clinics by 30%, the TCC has auto-referred the case (in accordance with the Competition Act No. 91-64) and, on 25 October 2018, issued a summary decision that provides for the suspension of increase of the rates of medical works and services, as the said increase violates the agreements concluded between the national fund of medical insurance and the union of private clinics, until a decision on the merits is pronounced.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Tunisia has been a member of COMESA since July 2018. Going forward, all activities in Tunisia should be conducted with COMESA competitions laws in mind.

- 15 If so, please comment on the frequency of your engagement with the regional body.**

Since Tunisia only recently joined COMESA, it's not possible to identify the frequency of engagement.

- 16 Do you have any views on the level of enforcement of the regional body?**

No.

- 17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?**

Even though the COMESA treaty suggests that under certain conditions the filing with the COMESA Competition Commission substitutes the merger filing domestically, we do not have information confirming such an interpretation under the domestic competition law.



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■ UGANDA

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

No amendments or guidelines relating to competition legislation have been proposed or enacted since January 2018. This is on account of the absence of substantive domestic competition legislation in Uganda, as well as a dedicated regulatory body or authority to enforce competition law. However, in 2016, the Ministry of Trade, Industry and Cooperatives developed a national competition and consumer protection policy.

The policy is cognisant of the country's vision 2040, National Development Plan, National Trade Policy, and other sectoral policies and strategies aimed at minimizing market distortions and promotion of sustainable development. Furthermore, the policy commits the government to implement obligations and commitments of the EAC, COMESA and WTO on consumer protection and competition.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

We are not aware of market inquiries or any plans by authorities in Uganda to initiate market inquiries in relation to any specific sector or industry in Uganda.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

As noted above, there is no competition authority in place in Uganda.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

Owing to the absence of a competition authority in Uganda, we are not in a position to assess the risk associated with dawn raids in Uganda.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

Owing to the absence of a competition authority and an enabling domestic competition regime, there are no notifiable transactions that have been prohibited since January 2018.



6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

There are no merger thresholds currently applicable in Uganda. However, we may draw insight from the minds of the legislators of the Competition Bill 2004, which is yet to be enacted into law. The Competition Bill 2004 imposes a mandatory notification requirement to the competition commission for transactions where the parties jointly have assets exceeding 500 currency points or a turnover worldwide in excess of 1,500 currency points. Under the Constitution of Uganda, 1995 as amended, a currency point is the equivalent of UGX 20,000.

From the perspective of group transactions, the proposed Ugandan competition legislation imposes a mandatory notification requirement in instances where the group belonging to the entity, in which shares, assets or voting rights may have been acquired has assets in Uganda in excess of 2,000 currency points; or a turnover exceeding 6,000 currency points or worldwide assets in excess of USD 1 billion or a turnover in excess of USD 500 million.

Apart from the monetary thresholds envisaged above, the resultant market share to be held by the undertaking upon completion of a proposed transaction may also trigger compulsory notification. This requirement applies in the context of mergers and acquisitions, leading to a combined market share of 35% in any relevant market held by the resultant undertaking.

As indicated above, the Competition Bill has not yet been enacted into law, and the proposed provisions are thus not yet law.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

We are not aware of any entities which have been accused of gun-jumping or any cases which have been brought against such entities in any sector in Uganda.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases in which entities have been fined for failing to comply with merger conditions in any sector in Uganda.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

We are not aware of any mergers that have been approved in any sector subject to novel or otherwise noteworthy conditions.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

There is no specific Ugandan legislation regarding merger control. However, regulatory approval prior to the completion of a merger or acquisition is required with regard to transactions in certain sectors such as the banking, telecommunications, capital markets, oil and gas, and insurance sectors.. The timelines for approval are relative and will vary according to the different sector regulators.



PROHIBITED PRACTICES

- 11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.**

We are not aware of any penalties that have been imposed on any entities engaged in prohibited practices in any sector since January 2018.

- 12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?**

No investigations were launched and publicised against any entities for engaging in prohibited practices.

- 13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?**

As explained above, different sectoral laws prohibit anti-competitive conduct in the different sectors. By way of illustration, the Uganda Communications Act 2013 prohibits anti-competitive conduct but does not criminalise it. It appears to us that the remedies available to an aggrieved person are civil in nature, in the form of statutory actions. Such action was brought against MTN Uganda Limited by Ezee Money Uganda Limited under HCCS NO. 330 of 2013. In light of the foregoing, we are not aware of any criminal charges or convictions that have been made against any person or entity for engaging in anti-competitive conduct since January 2018.

REGIONAL BODIES

- 14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)**

Yes. Uganda is a member state of COMESA and therefore subject to COMESA competition law regime. In addition to COMESA, Uganda is also a member of the EAC and is therefore subject to the EAC Competition Act, 2006 ("**EAC Act**").

Pursuant to section 4 (1) of the EAC Act, the EAC Act is only applicable to economic activities and sectors having a cross-border effect. Whereas the act contains no statutory definition of the word "cross-border," we understand the ordinary meaning of cross-border to be "an economic activity that spans the geographically defined borders of the East African Community states" which are the Republic of Uganda, Rwanda, Burundi, South Sudan, Kenya and the United Republic of Tanzania.

Therefore, activities in Uganda should be conducted with the COMESA and EAC competition laws in mind.



15 If so, please comment on the frequency of your engagement with the regional body.

There has been no engagement with either COMESA or EAC in relation to competition law enforcement in Uganda.

16 Do you have any views on the level of enforcement of the regional body?

We are not aware of the level of enforcement of competition law in relation to Uganda by the EAC. However, we note that the COMESA authority held a training workshop for Ugandan officials in 2018, including over 110 ministerial district commercial officers, sensitising them to competition law issues, detecting antitrust offences, and catalysing the enactment of robust competition legislation in the COMSEA region. Uganda has been flagged as one of the target jurisdictions for the COMESA authority, possibly because the current COMESA board chairman is a Ugandan national.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes. A notifiable merger would necessitate both domestic (currently sector-based notifications) and regional notifications to the extent applicable.

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 **ZAMBIA**

GENERAL

1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.

The new and/or proposed amendments to the competition legislation in Zambia are as follows:

- a. The Competition and Consumer Protection Commission ("**CCPC**") has since issued the CCPC Guidelines on Calculating Merger Fees 2018 ("**Fee Guidelines**"). The Guidelines prescribe a new method for calculating merger filing fees. In this regard, the Fee Guidelines stipulate that the filing fee shall be 0.1% of the merging parties' turnover or assets value (whichever is higher) (subject to a cap of maximum fee of 16,666,667 fee units — where one fee unit is equivalent to ZMW 0.30. When ZMW 0.30 is multiplied by 16,666,667 fee units, the maximum threshold is ZMW 5 million). The notification fee is based on the total values of the turnover or assets of the economic entity in Zambia even if proportions of these amounts are generated outside the market(s) for the merger assessment. For parties wholly domiciled outside Zambia, the notification fee will be based on the total values of the turnover generated in Zambia.

Where parties to a merger have notified through a special purpose vehicle, the commission shall consider all the relevant subsidiaries and/or holding companies (with direct and indirect interest) in Zambia.

- b. Further, the CCPC has proposed some amendments to the Abuse of Dominance Guidelines and the Fines Guidelines that have since been circulated to the public for submission of comments.

The proposed amendments to the Abuse of Dominance Guidelines feature changes under the following headings:

- i. concepts on abuse of dominance;
- ii. analysis of some specific abuse of dominance conducts;
- iii. fidelity or loyalty discounts;
- iv. justifications;
- v. defences; and
- vi. remedies & sanctions



Further, the proposed amendments to the Fines Guidelines feature changes under the following headings:

- i. basis for issuing fines;
 - ii. offences punishable by administrative fines under the act;
 - iii. determination of administrative fines; and
 - iv. fine calculation
- c. A final draft amending the Competition and Consumer Protection Act No. 24 of 2010 ("**Competition Act**") that encompasses various amendments has been submitted to the legislative body for enactment. The proposed draft does not, however, contain any significant changes with regards to the prohibitions, penalties and fines as already provided under the current Competition Act.

2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?

Yes, the CCPC has initiated and is currently carrying out market inquiries in various sectors. The CCPC shall only publish its findings and circulate these for the general public after the conclusion of the inquiries.

3 Has your competition authority publicly expressed concern in relation to any industry/sector?

Yes in the CCPC's 2017 end-of-year media briefing by the executive director, and held on 6 February 2018, the CCPC expressed the following concerns in various sectors:

- a. That the manufacturing sector had continued to dominate in abuse of dominance cases, contributing over 50% of the cases reviewed by the CCPC in 2017.
- b. That the service sector received the highest number of cases, at 24, followed by the wholesale/retail trade sector, which recorded five of the cases reviewed by the CCPC in 2017 for restrictive business practices.
- c. That the CCPC in 2017 concluded its investigations into a cartel case that involved price-fixing by six bakers on the Copperbelt Province. The CCPC was concerned that some bakeries had simultaneously adjusted bread price around the same time and within the same parameters. All of them increased the price of bread and other confectioners by as much as 23%.



4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.

Yes, they are. There have been about four cases since January 2018 that are currently being investigated and that were initiated by way of dawn raids. However, the details of these cases could not be disclosed to us as they are still being investigated. We understand that one dawn raid related to wheat farmers.

MERGER CONTROL DEVELOPMENTS

5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?

There have been no notified transactions prohibited since January 2018.

6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?

Yes, there has been an amendment to the merger filing fees since January 2018. Please see the response under *General* in paragraph 1 above.

7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?

The filing/submission of a merger notification is mandatory in Zambia only in relation to mergers that meet the notification requirements as outlined in paragraphs 15 and 17 below. The filing/submission is not mandatory as regards transactions that do not meet the prescribed thresholds.

Since January 2018, the CCPC has brought two cases against two entities accused of gun-jumping or failing to notify the CCPC of the transaction. The details of the cases could not be disclosed to us as they are still undergoing investigations.

8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

We are not aware of any cases that have been brought against entities since January 2018 for failing to comply with merger conditions.



9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

In October 2018, The the CCPC, sometime in October 2018, granted conditional authorisation to the merger between Zambia National Broadcasting Corporation ("**ZNBC**") and Hantex International Corporation Limited ("**Hantex**"), which is controlled by Startimes International Holdings Limited ("**Startimes International**").

This followed an application for the merger of the two entities, to the CCPC by Top Star (JV) on 20 June 2018. In granting the conditional authorisation of the merger, the CCPC noted the following:

- a. There is no law on digital migration.
- b. Top Star (JV) is amenable to the Competition Act; the Zambian government has obtained a loan for the implementation of digital migration, which has to be repaid.
- c. Top Star (JV), created by ZNBC and Hantex, is currently operational.

Further, pursuant to the provisions of the Competition Act, the CCPC also made the following directives:

- a. The operational functions of Top Star (JV) shall be split into two entities. Top Star shall perform the functions of the public signal distributor while ZNBC shall provide the subscriber management services and content provision services. The two entities shall relate on commercial basis at arm's length.
- b. Top Star (JV), in their operation of signal distribution, shall ensure that it provides access to entities that require signal distribution services on the same terms as those that would apply to ZNBC and within a reasonable period of time as that accorded to ZNBC. For the avoidance of doubt, the reasonable period shall be a period within which an entity requesting the services of Top Star JV would be able to operate economically without losing revenue or suffering losses due to delays by Top Star (JV).
- c. Top Star (JV) shall not abuse their dominance in the signal distribution market pursuant to section 16 of the Competition Act.
- d. Top Star (JV) shall ensure that all pricing decisions and tariffs charged to their customers for signal distribution are approved by the Zambian Information & Communications Technology Authority in accordance with section 47 (3) of the Information and Communication Technology Act, 2010.
- e. Top Star (JV) should sign service-level agreements with all their customers and abide by the provisions of those agreements, and notify the CCPC about these agreements.

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- f. Note that it is possible that Top Star (JV) has the potential to and in fact result in:
- i. reduced tax revenue;
 - ii. limited growth of other private operators;
 - iii. restriction to entry and foreclosure of access to the digital distribution market;
 - iv. creation of barriers for the supply of cheap alternative decoders; and
 - v. reduced consumer choice and welfare.
- g. Startimes International shall divest all of its shareholding to ZNBC or the nominee of the Zambian government within one year from the date of full loan amortisation and revert all the assets to ZNBC.
- h. To prevent doubt from arising, pursuant to Article 173 of the Zambian Constitution Chapter 1 of the Laws of Zambia as read with section 31 of the Competition Act, the CCPC will periodically monitor the loan repayment.

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

Before the CCPC can approve a transaction, an investigation has to be made by the CCPC. There is a two-phase investigation process. The first phase is conducted by the CCPC management during the first 35 calendar days of the notification for the review of the transaction, followed by third-party stakeholder consultations and, finally, a preliminary assessment report. If it is concluded at the first phase that the merger is less than likely to harm competition and that no further evidence is likely to be uncovered to revise this finding, the Sub-Technical Committee of the Board ("**TC**") will "fast-track" clearance of the merger application. The entire board may then delegate authority to the TC to issue a final authorisation of the merger by calendar day 45.

In the event that a TC Phase I clearance is rejected by the full board, the application proceeds to Phase II of the investigation. During Phase II, the CCPC will conduct further market research and analysis, culminating in the submission of a staff paper to the board. By day 90, merging parties are informed in writing of the board's determination and the board's decision will follow thereafter.

The period allowed for the investigation of a proposed merger is up to 90 calendar days from the date of notification, with the possibility of an extension of 30 days if prior notice is given 14 days before the expiry of the 90-day period. The CCPC is required to complete its investigation of a proposed merger and issue its determination within 90 days of the date of the application for authorisation, unless a party to the proposed merger fails to provide the CCPC with the information required. The speed of assessing and approving a transaction will depend on its complexity and on whether it falls under Phase I or Phase II. Phase I transactions are concluded within 45 days, while Phase II take more than 45 days, but are subject to the statutory time limitations discussed above.



The time frames stipulated above apply to all applications for approval, regardless of whether the transaction is complex or not. If the CCPC does not issue its determination regarding the proposed merger within 90 days or within an extension of 30 days (if prior notice is given before the expiry of 90 days), then the proposed merger shall be deemed to have been approved.

No proposed transaction may be implemented pending approval of the CCPC.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

The CCPC, sometime in March 2018, fined four hatcheries in Lusaka 7% of their annual turnover for fixing trade conditions and setting production quotes in a long-running cartel case. Further, the CCPC ordered the parties to terminate the agreement and independently set a time requirement for pre-booking that is viable and auditable.

The decision to fine the four hatcheries was made on 1 March 2018. This was after a comprehensive investigation by the CCPC found that the hatcheries were involved in collusive practices contrary to the provisions of the Competition Act.

The CCPC initiated the investigation in 2013 after the Poultry Association of Zambia (PAZ) posted a news item on its website on 26 February 2013, which stated that hatcheries through PAZ had agreed only to set eggs according to demand and that poultry farmers had to book four weeks in advance for day-old chicks.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, the CCPC launched and publicised investigations sometime in May 2018 after receiving complaints regarding the increase in the price of bottled water following the suspension of the manufacturing, packaging, supply and retail by Zambia Metrological Agency on the 18.9 litre, 20 litre and 21.8 litre of bottled portable water.

The CCPC took a keen interest in the matter and launched investigations. The CCPC warned all manufactures and traders that they would be taken to task if found to have increased the prices of the commodity without reasonable justification or corresponding increases in the sourcing cost. It also warned businesses to desist from engaging in conduct that is unfair and anti-competitive.



13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, it is. The penalty for participating in cartel conduct/anti-competition has two limbs: personal liability and corporate liability. The Competition Act provides that anyone found to be engaging in anti-competitive/cartel conduct in contravention of the Competition Act commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units (approximately ZMW 90 million) or to be imprisoned not exceeding five years or both. A firm/enterprise that is found to be engaging in anti-competitive conduct in contravention of the Competition Act is liable to pay the CCPC an administrative fine not exceeding 10% of its annual turnover.

However, no criminal charges have been brought or convictions made against any persons or entities for engaging in any anti-competitive conduct since January 2018. The CCPC has opted to receive a fine rather than instigate criminal proceedings in such instances.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Zambia is a member of COMESA, and is therefore, in addition to the domestic competition law regime, subject to the COMESA competition law regime, which is enforced by the COMESA Competition Commission. Therefore, activities in Zambia should be conducted with COMESA competition laws in mind.

15 If so, please comment on the frequency of your engagement with the regional body.

The frequency of engagement is subject to whether both the acquiring firm and the firm being acquired, or either the acquiring firm or the firm being acquired operate in two or more member states such that the notification requirements to the COMESA Competition Commission are triggered.

16 Do you have any views on the level of enforcement of the regional body?

We are yet to see the level of enforcement by the COMESA Competition Commission in relation to Zambia. We note that the COMESA competition law regime has not been formally domesticated in Zambia.



17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

The requirement for a notification of a merger both domestically and regionally is subject to whether or not the firms intending to engage in the merger transaction meet the prescribed criteria/threshold set out by the Competition Act and the COMESA regulations that require a notification to be made. If the firm(s) meet the COMESA threshold requirements, then it will be mandatory for a notification to be made to the COMESA Competition Commission for authorisation.

The requirement for a domestic notification and approval of a merger by the CCPC will also apply and will be required where the combined turnover or assets, whichever is higher, in Zambia of the merging parties is at least ZMW 15 million (approximately USD 1.5 million) ("**Prescribed Threshold**"). In determining the Prescribed Threshold, the CCPC will consider the turnover/assets of each of the firms being acquired and the acquirer, and this is largely informed by their respective latest audited financial statements.

The CCPC will consider whether the merger acquires or establishes, direct or indirect, control over the whole or part of the business of another enterprise. Under the Competition Act, a person/firm controls an enterprise if that person/firm, among other things:

- a. is able to appoint or veto the appointment of a majority of the directors of the enterprise;
- b. has the ability to materially influence the policy of the enterprise in a manner comparable to a person who, in the ordinary commercial practice, can exercise the element of control in a) above; and
- c. has the ability to veto strategic decisions of the enterprise such as appointment of directors and other strategic decisions which may affect the operations of the enterprise.

In practice, if the notification is made to the COMESA Competition Commission, the CCPC will not accept a domestic notification. However, there is no domestic law that justifies this, but it is the local practice.



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 **ZIMBABWE**

GENERAL

- 1 Please describe any new amendments or guidelines relating to the competition legislation in your jurisdiction that have been proposed or enacted since January 2018.**

The entire Competition Act has been amended, and is currently in draft form awaiting approval. Approval of the draft amendment is imminent.

- 2 To the extent that there are any market inquiry provisions in your jurisdiction, has the authority initiated or are there any plans to initiate any market inquiries in relation to any sector/industry?**

The Competition & Tariff Commission ("CTC") has previously initiated market inquiries in the fertiliser and beef sectors to better understand the sectors and look into possible anti-competitive arrangements. To date, no further action has been taken.

- 3 Has your competition authority publicly expressed concern in relation to any industry/sector?**

The CTC has expressed concerns in relation to the beef sector. In particular, there is a potential cartel arrangement in the beef sector.

- 4 Are dawn raids by the competition authority a high risk in your jurisdiction? Please provide as much information as possible about any dawn raids conducted by your jurisdiction's competition authority since January 2018.**

No, dawn raids are not a high risk in Zimbabwe, and no dawn raids have been conducted by the CTC since January 2018.

MERGER CONTROL DEVELOPMENTS

- 5 Have any notified transactions been prohibited by the competition authority in your jurisdiction since January 2018? If so, on what basis?**

Only one transaction was prohibited because it was going to result in serious competition concerns and was contrary to public interest in Zimbabwe. Two entities in the stock feeds sector were prohibited from merging as the merger would have created a monopoly, and would potentially oust other players from the sector.

- 6 Are there official proposals to amend merger filing fees and/or monetary thresholds or have any such amendments been affected since January 2018?**

There are no such proposals on record.

- 7 Is the submission of a merger notification suspensory in your jurisdiction? If so, has the authority brought any cases against entities accused of gun-jumping and/or prior implementation of a notifiable transaction since January 2018?**

Yes, merger notification is mandatory, and should any party consummate or implement a merger without the CTC's approval, such party will be liable to a fine. We are not aware of any fines that have been imposed by the CTC since January 2018.



8 Please describe any cases since January 2018 in which the competition authority fined any entities for failing to comply with merger conditions.

None.

9 Since January 2018, has the authority approved any merger/s subject to novel or otherwise noteworthy conditions?

Two mergers were approved with conditions in the fuel sector (conditions that are meant to give other players access to necessary infrastructure in the industry that they control).

10 On average, how long does the authority in your jurisdiction take to approve a non-complex transaction? What about a complex one?

The CTC is granted 90 days within which to assess a notified merger and deliver its findings. While no distinction is made in law between complex and non-complex mergers insofar as the CTC's assessment period is concerned, non-complex mergers tend to be assessed within a shorter timeframe, sometimes as quickly as 30 days.

PROHIBITED PRACTICES

11 Please provide information in relation to any noteworthy penalties since January 2018 that were imposed on any entities engaged in prohibited practices such as cartel conduct, abuse of dominance, etc.

None.

12 Has the authority launched and publicised any new investigations since January 2018 against any entities for engaging in prohibited practices?

Yes, the CTC has publicised in the government gazette and the local newspapers, the commencement of an investigation into the alleged anti-competitive practice in the stock-feed sector. The CTC is primarily concerned with tying arrangements in the sale of stock feeds and day-old chicks.

13 Is cartel conduct/anti-competitive conduct criminalised in your jurisdiction? If so, have any criminal charges been brought/convictions made against any persons and/or entities for engaging in any anti-competitive conduct since January 2018?

Yes, cartel conduct is criminalised in Zimbabwe. To date, no one has been convicted for engaging in cartel /anti-competitive conduct.

REGIONAL BODIES

14 Please confirm whether your jurisdiction is a member of any regional bodies that have a competition law regime (e.g., COMESA, CEMAC, EAC, etc.)

Zimbabwe is a member of COMESA, the African Competition Forum ("ACF" and International Competition Network ("ICN")). Therefore, activities in Zimbabwe should be conducted with these regional bodies in mind, particularly COMESA.



15 If so, please comment on the frequency of your engagement with the regional body.

We have frequent engagements with the COMESA Competition Commission on several transactions. We have not had engagements with the ACF or ICN.

16 Do you have any views on the level of enforcement of the regional body?

The CTC and the COMESA Competition Commission have frequent engagements on competition law enforcement. In addition, the CTC regularly participates in workshops and trainings organised by COMESA for its member states. Furthermore, the CTC is actively involved in ACF workshops, trainings and studies, and participates in almost all ICN workshops and training.

17 If a merger is notifiable in your jurisdiction, do you notify both domestically and regionally?

Yes, a merger must be notified domestically (to the CTC) and regionally (to the COMESA Competition Commission), if the notification requirements are met.



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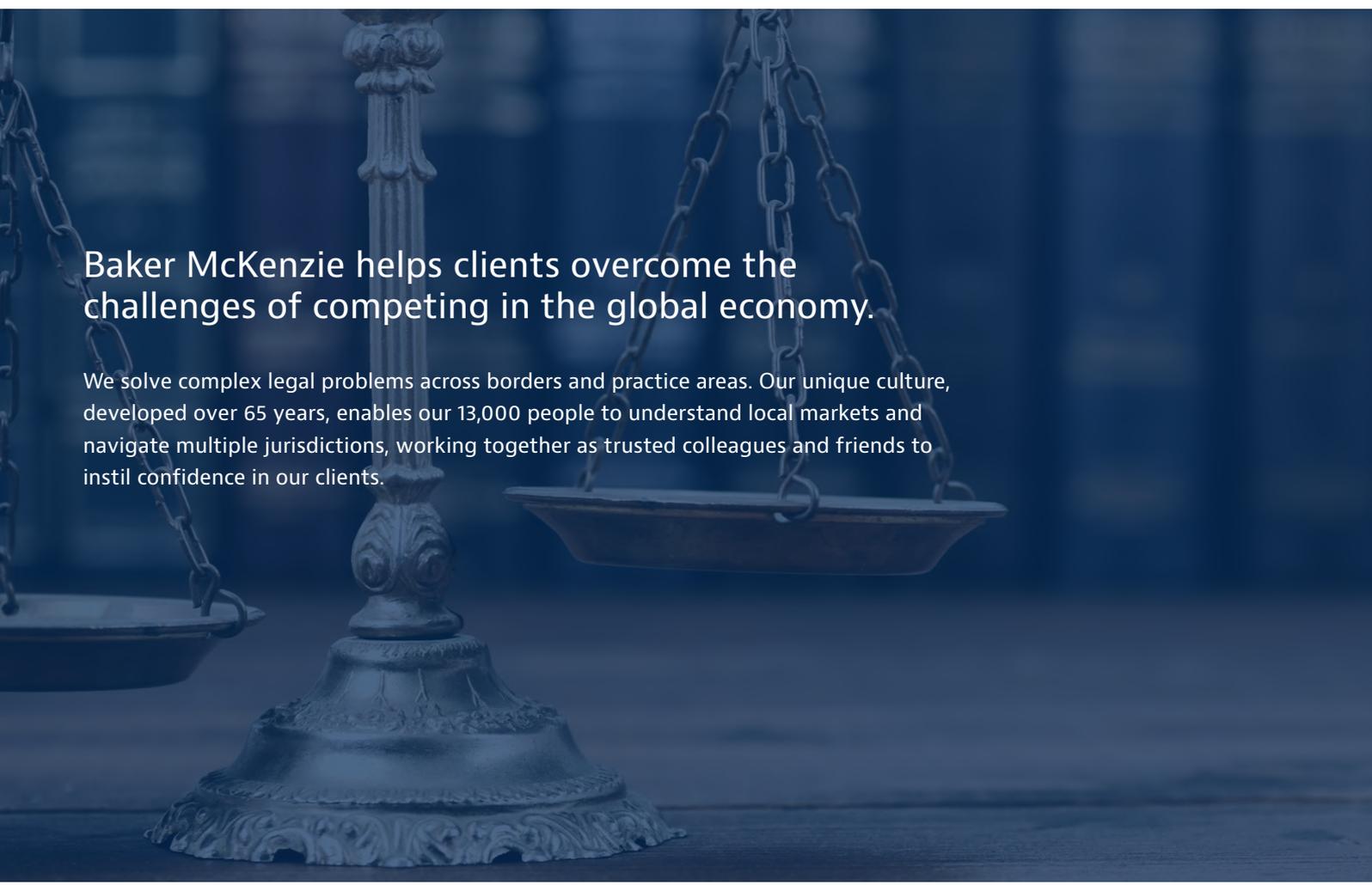
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A pair of ornate, dark-colored metal scales of justice is shown against a blurred, dark blue background. The scales are positioned centrally, with the central pillar and the two pans hanging from chains. The lighting is soft, highlighting the intricate details of the metalwork.

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